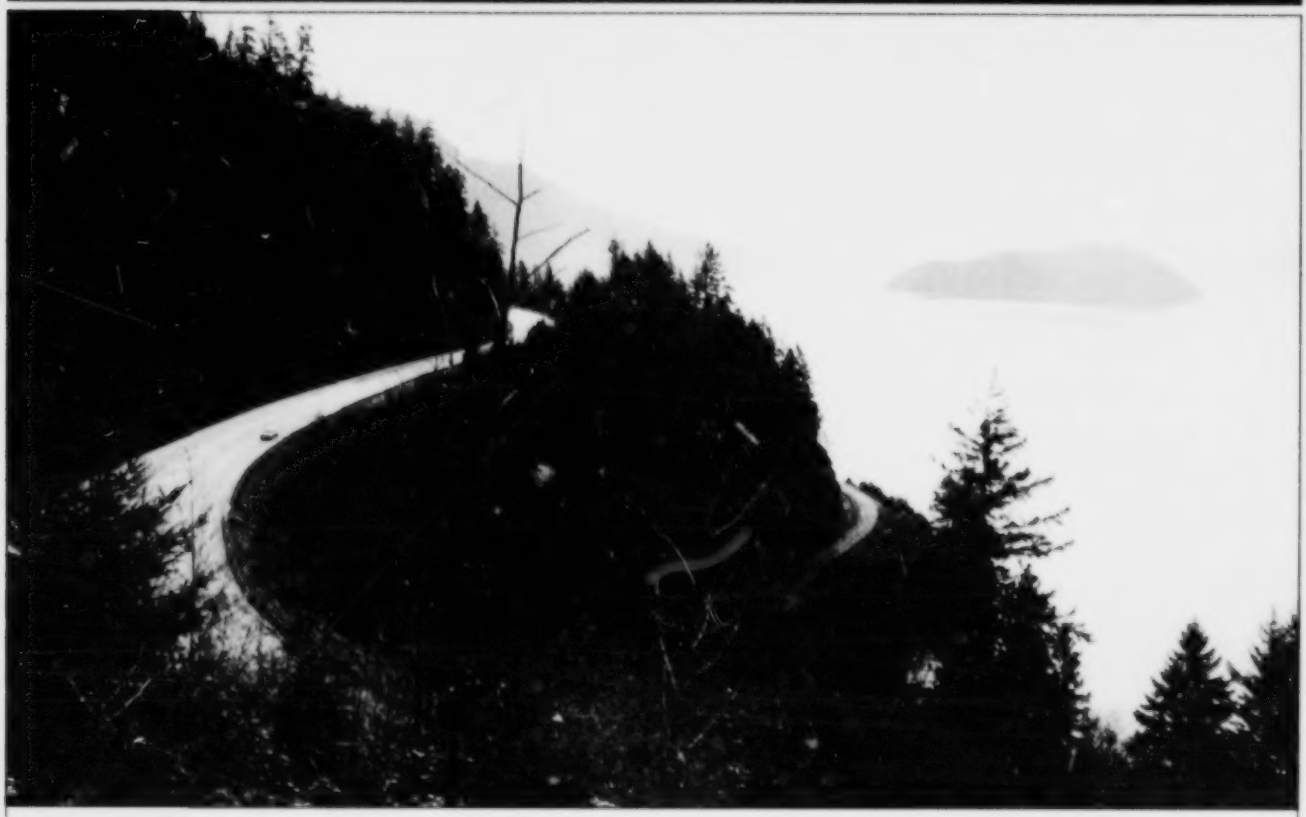
Volume 1: Instructions to Proponents



Sea-to-Sky Highway Improvement Project

Request for Proposals for DBFO Project

August 31, 2004

BRITISH COLUMBIA Ministry of Transportation

partnerships

105-00752/

Table of Contents

List of Acronyms v

1. General 1

1.1 Introduction 1

1.2 Structure of the RFP 2

1.3 Project Success Factors 2

1.4 Project Overview 3

1.5 Timetable to Financial Close 6

2. What is the DBFO Project? 8

2.1 Overview 8

2.2 Design and Construction 8

2.2.1 Minimum Performance Requirements 8

2.2.2 Opportunities for Added Value 10

2.2.3 Design and Construction by Others 11

2.2.4 Responsibility for Work by Others 12

2.3 Operation, Maintenance, and Rehabilitation 13

2.3.1 Minimum Performance Requirements 13

2.3.2 Opportunities for Added Value 13

2.3.3 Operation and Maintenance by Others 14

2.4 Features of the DBFO Agreement 15

2.4.1 Project Term 15

2.4.2 DBFO Project Key Dates 15

2.5 Project Lands 15

2.5.1 The Highway 15

2.5.2 Land Acquisition Procedure for the Highway Except DB4 16

2.5.3 Land Acquisition Procedure for Section DB4 16

2.5.4 Acquisition of Other Lands 16

2.5.5 Compliance with Requirements of EA Certificate 16

2.5.6 DBFO Co's Rights in Highway Lands 17

2.6 Selected Technical Requirements 17

2.6.1 Securing Permits, Licences, and Approvals 17

2.6.2 Utilities and Related Infrastructure 17

2.6.3 Quality Management System 18

2.6.4 Environmental Considerations 18
2.6.5 Traffic Management 18
2.6.6 Olympic Games Requirements 19
2.6.7 Rock Slope Stabilization Program 20
2.6.8 Use of MOT Pits and Quarries 20
2.6.9 Handback Requirements 20
2.7 Communication and Consultation with the Public and Stakeholders 20
2.7.1 Categories of Communication and Consultation 21
2.7.2 Lead and Supporting Roles 21
2.8 First Nations (confidential, material to negotiations) 23
3. What are the Payment Arrangements? 24
3.1 Annual Affordability Ceiling (confidential, material to negotiations) 24
3.2 Total Performance Payment 24
3.2.1 Overview 24
3.2.2 Availability Payments 26
3.2.3 Vehicle Usage Payment 27
3.2.4 Performance Incentive Payment 28
3.2.5 End of Term Payment 29
3.3 Provisional Funds (confidential, material to negotiations) 29
3.4 Tax Issues 29
3.5 Goods and Services Tax 29
4. What is the Consultation and Selection Process? 30
4.1 Proponent Consultation Process 30
4.2 Development of the DBFO Agreement 31
4.2.1 Draft DBFO Agreement 31
4.2.2 Revised DBFO Agreement 31
4.2.3 Preferred Proponent and Finalization of DBFO Agreement 31
4.2.4 Priced Amendments 32
4.2.5 Contract Closing Period 32
4.3 Proposal Submission Requirements 33
4.4 Closing Time and Closing Location for Proposals 34
4.5 Evaluation Process 35
4.5.1 Overview 35
4.5.2 Stage 1: Satisfaction of Mandatory Submission Requirements 35
4.5.3 Stage 2: Satisfaction of Minimum Performance Requirements 35
4.5.4 Stage 3: Scored Evaluation of Proposal 35

4.5.5 General Guidelines 36
4.5.6 Debriefing 36
4.6 Design-Build Failsafe Proposal 36
4.7 Fairness Reviewer 36
5. General Information and Instructions 38
5.1 Background Technical Information 38
5.1.1 Overview 38
5.1.2 Geotechnical Investigations Ongoing 38
5.1.3 Environmental Information 38
5.2 Data Room 41
5.3 Contact Person and Questions and Answers Protocol 41
5.4 Proponent Communications Protocol 42
5.5 Investigations, Surveys, and Studies by Proponents 42
5.6 Site Access 43
6. General Matters 44
6.1 Selection Process Management and Advisors 44
6.2 Stipend and Expenses 44
6.3 Province's Right to Amend or Cancel RFP 44
6.4 Province's Right to Reject any and all Proposals 46
6.5 Conflicts in Documents 46
6.6 Conflicts of Interest/Relationship Review Process 47
6.7 Confidentiality 48
6.8 No Collusion 48
6.9 No Lobbying 48
6.10 Disclosure 49
6.11 Freedom of Information and Protection of Privacy Act 50
6.12 Transportation Investment Act 50
6.13 Insurance and Workers Compensation 50
6.14 Changes to Proponents and Proponent Team Members 50
6.15 Restricted Parties 51
6.16 No Reliance 53
6.17 No Contract 55
6.18 Proponent Team Members and Subcontractors 55
6.19 No Liability 55

6.20 Dispute Resolution 56

6.21 Proposal Evaluation 56

Glossary of Terms **58**

Interpretation **70**

List of Acronyms

Acronym	Term
AADT	annual average daily traffic
AASHTO	American Association of State Highway and Transportation Officials
AMP	Archaeology and CMT Management Plan
APEGBC	Association of Professional Engineers and Geoscientists of British Columbia
APPM's	Asset Preservation Performance Measures
ARD/ML	acid rock drainage and metals leaching
BC Rail	British Columbia Railway Company
BCEAA	British Columbia Environmental Assessment Act
BCTFA	BC Transportation Financing Authority
CEAA	Canadian Environmental Assessment Act
CMB	concrete median barrier
CMP	corrugated metal pipe
CMS	changeable message signs
CMT	culturally modified tree
CPI	Consumer Price Index
CRA	Canada Revenue Agency
CSD	context sensitive design
CTB	BC Consumer Taxation Branch
CWS	Canadian Wildlife Service
DFO	Department of Fisheries & Oceans
DHV	design hourly volumes
EA Certificate	Environmental Assessment Certificate
EAO	Environmental Assessment Office
EQMP	Environmental Quality Management Plan
FHWA	Federal Highway Administration
FOS	factor of safety
GAAP	Canadian Generally Accepted Accounting Practice
GST	goods and services tax
HADDs	Harmful Alteration, Disruption or Destruction
IRR	internal rate of return
KPM's	key performance measures
LOS	level of service
MADP	Manual of Aesthetic Design Practices
MOT	Ministry of Transportation
MPR	Minimum Performance Requirements
MSC	Meteorological Service of Canada

Acronym	Term
MSE	mechanically stabilized earth
NPV	"net present value"
OGA	open graded asphalt
OMR	operation, maintenance, and rehabilitation
OPM's	Operational Performance Measures
PA	Preliminary Alignment
PAG	potentially acid generating
PAG/ML	potentially acid generating/metal leaching
PCO	Project Corridor Objectives
PFC	Process Flow Chart
PHCC	Provincial Highway Communications Centre
PST	provincial sales tax
QC	Quality Control
R/HMP	Raptor/Heron Management Plan
RAD	Rural Area Deduction
RCMP	Royal Canadian Mounted Police
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RHRS	Rock Hazard Rating System
ROW	right-of-way
SS	Standard Specifications for Highway Construction, 2004, Ministry of Transportation
SSD	stopping sight distance
TAC	Transportation Association of Canada
TCM	Traffic Control Manual
TCP	Traffic Control Plan
TCS	Traffic Control Supervisors
TMG	Traffic Management Guidelines
UAD	Urban Area Deduction
WCB	Workers Compensation Board
WLAP	Ministry of Water, Land and Air Protection

1. General

This Section 1 provides an overview of the selection process, including the timetable through Spring 2005, sets out the structure of this Request for Proposals, and provides a summary description of the scope of work to be undertaken.

1.1 Introduction

The Province of British Columbia (the Province) is issuing this Request for Proposals (RFP) as part of the second stage of a two-stage selection process for the proposed design-build-finance-operate project (the DBFO Project) to be undertaken on a section of the Sea-to-Sky Highway, approximately 100 km long, between Horseshoe Bay in West Vancouver and Function Junction at Whistler, British Columbia (the Highway).

The first stage of the two-stage selection process, the Request for Qualifications, resulted in the selection of the following Short-Listed Respondents:

- Black Tusk Highway Group
- S2S Transportation Group
- Sound Highway Development Consortium

Only Short-Listed Respondents who have executed and delivered a Bidding Agreement (each a Proponent) in the form attached to this RFP as Appendix 1G, are eligible to receive an RFP and participate in the Consultation and Selection Process.

It is anticipated that through the Consultation and Selection Process, one of the three Proponents will be selected to become the Preferred Proponent who will then be offered the opportunity to enter into a DBFO Agreement for the delivery of the DBFO Project. A key element of the Consultation and Selection Process is the proponent consultation process, which is designed to:

- provide opportunities for Proponent participation;
- maximize opportunities for innovation;
- help ensure that the project success factors set out in Section 1.3 are met; and
- facilitate input on the development of the DBFO Agreement.

All questions, inquiries, comments, requests for information, requests for clarification, and other communications regarding anything about the DBFO Project must be in writing and directed to the Contact Person designated in Section 5.3.

1.2 Structure of the RFP

The RFP contains the following five volumes, each of which forms an integral part of this RFP:

Volume 1 – Instructions to Proponents
Volume 2 – Form of DBFO Agreement[1]
Volume 3 – Design and Construction Requirements
Volume 4 – Operation, Maintenance, and Rehabilitation Requirements
Volume 5 – Quality Management System Requirements

Volume 1 addresses the following questions:

- What is the DBFO Project? (Section 2)
- How will DBFO Co be compensated for delivering the DBFO Project? (Section 3)
- How will the Province select the Preferred Proponent? (Section 4)
- What are the rules and procedures of the Consultation and Selection Process? (Sections 5 and 6)

Volume 2 contains the form of the DBFO Agreement. Details of the process for finalizing the DBFO Agreement are set out in Section 4.2 of this volume.

Volumes 3, 4, and 5 (collectively, the Technical Requirements), contain scope of work, performance requirements, and specifications relating to the design, construction, operation, maintenance, and rehabilitation of the Highway. The Technical Requirements (with any amendments resulting from additional commitments in the Preferred Proponent's Proposal) and excerpts from the Preferred Proponent's Proposal will provide the basis for a number of the schedules to the DBFO Agreement.

All volumes of the RFP must be read in their entirety for a complete understanding of the DBFO Project and the Consultation and Selection Process.

A single glossary of terms that applies to all of Volumes 1, 3, 4, and 5 is included as an appendix to each volume, and follows Section 6.21 in this document.

1.3 Project Success Factors

A successful DBFO Project will achieve the following:

- Improvements to the safety, reliability, and capacity of the Highway.
- Substantial Completion of the New Works by not later than June 30, 2009.
- Substantial Completion of the Olympic Requirements by not later than the date to be specified in the DBFO Agreement.

[1] *The Revised DBFO Agreement will be issued by RFP Addendum on September 24, 2004.*

- Final Completion of the Minimum Project Requirements for the New Works by not later than October 31, 2009 (the Final Completion Longstop Date).
- Final Completion of the Olympic Requirements by not later than the date to be specified in the DBFO Agreement (and prior to the start of the Olympic Period).
- Final Completion of Post-Olympic Works by not later than June 30, 2010.
- Management of traffic flows during construction to minimize disruption and maximize predictability of traffic delays.
- Total Performance Payment at or below the Annual Affordability Ceiling.
- Operation, maintenance and rehabilitation of the Highway in a manner that meets or exceeds the provincial standards included in Volume 4.

1.4 Project Overview

The Province has developed a program of work to improve the safety, reliability, and capacity of the Highway. Safety, reliability, and capacity improvements include, but are not limited to, widening and curve-straightening of certain sections of the Highway, improved sight lines, additional passing lanes and other design innovations and measures to reduce hazards, shorten travel times and increase highway capacity.

For purposes of defining the scope of work, the Highway has been divided into the 13 sections shown as DB Sections in Figure 1-1. The DB Sections fall into two categories, depending upon which party is responsible for the design and construction of the improvements:

- MOT sections – MOT contractors (other than DBFO Co) are responsible for design and construction work, if any, in these sections.
- DBFO Co sections – DBFO Co is responsible for design and construction work in these sections.

The DBFO Project includes the design and construction of improvements in the DBFO Co sections, the operation, maintenance, and rehabilitation of the Highway in all 13 DB Sections, and the operation and maintenance of the Adjacent Side Roads. Together, Figure 1-1 and Table 1-1 provide a summary of the DB Sections and identify the responsibilities of each party. Additional information is provided in Section 2.

The DBFO Project further includes the financing and commercial arrangements for the design, construction, operation, maintenance, and rehabilitation work in accordance with the DBFO Agreement. Additional information is provided in Section 3.

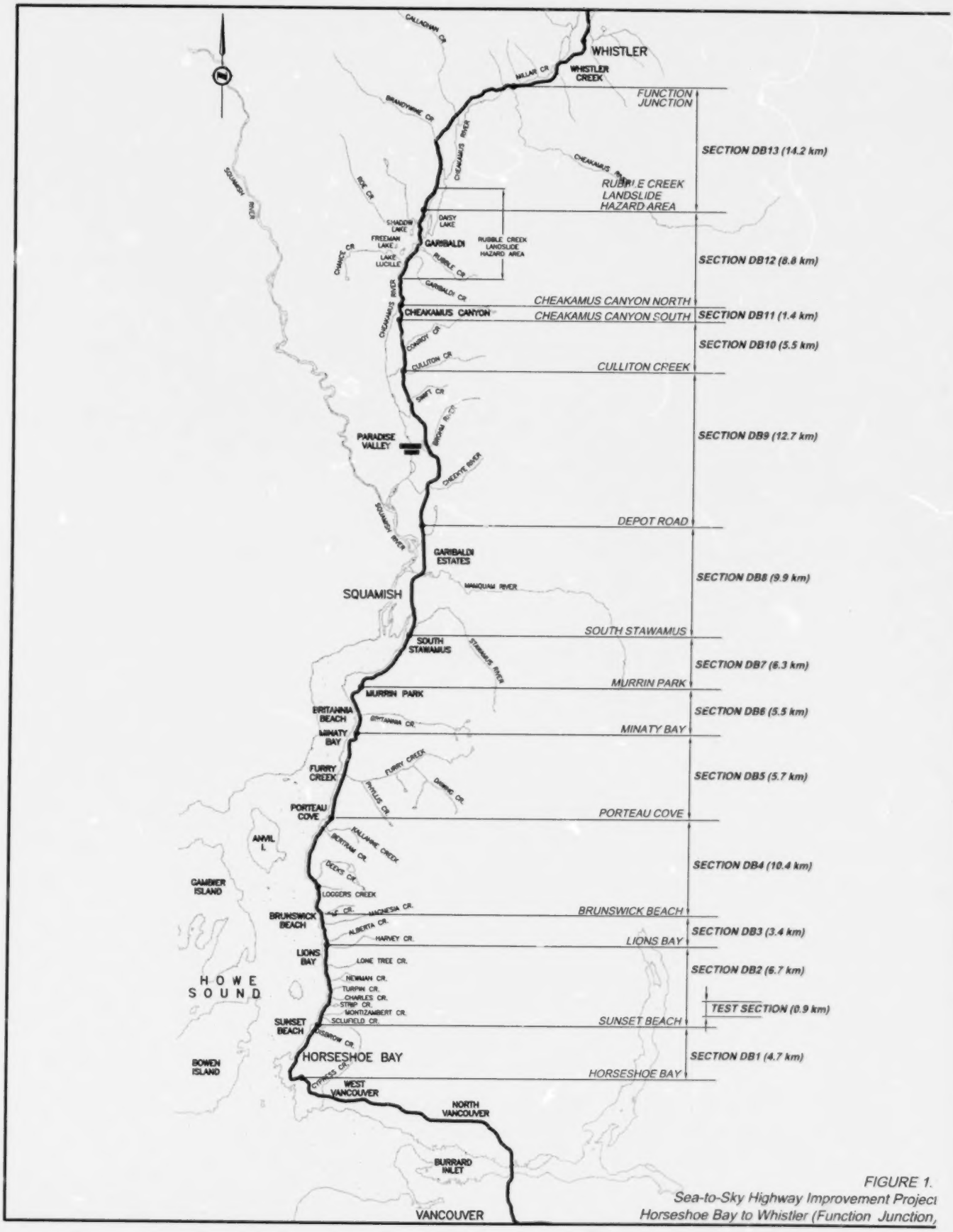


FIGURE 1.
Sea-to-Sky Highway Improvement Projec
Horseshoe Bay to Whistler (Function Junction,

TABLE 1-1
Highway DB Sections and Associated Responsibilities

Highway Section	Length[1] (km)	Description of Highway Section	Responsibility for Design and Construction Work	Responsibility for Operation, Maintenance, and Rehabilitation
DB1	4.7	Horseshoe Bay to Sunset Beach	DBFO Co	DBFO Co
DB2	6.7	Sunset Beach to Lions Bay[2]	MOT contractor	DBFO Co
DB3	3.4	Lions Bay to Brunswick Beach	DBFO Co	DBFO Co
DB4	10.4	Brunswick Beach to Porteau Cove	DBFO Co	DBFO Co
DB5	5.7	Porteau Cove to Minaty Bay	DBFO Co	DBFO Co
DB6	5.5	Minaty Bay to Murrin Park	DBFO Co	DBFO Co
DB7	6.3	Murrin Park to South Stawamus	DBFO Co	DBFO Co
DB8	9.9	Squamish: South Stawamus to Depot Road	DBFO Co	DBFO Co
DB9	12.7	Depot Road to Culliton Creek	Improvements not required	DBFO Co
DB10	5.5	Culliton Creek to Cheakamus Canyon South[3]	MOT contractor	DBFO Co
DB11	1.4	Cheakamus Canyon South to Cheakamus Canyon North[3]	MOT contractor	DBFO Co
DB12	8.8	Cheakamus Canyon North to Rubble Creek Landslide Hazard Area[4]	DBFO Co	DBFO Co
DB13	14.2	Rubble Creek Landslide Hazard Area to Function Junction	DBFO Co	DBFO Co

1. The north and south limits of the Highway are set out in Volume 4.
2. Construction will commence September 2004 and is scheduled for completion by Fall 2007.
3. Improvements are underway as a project separate from Sea-to-Sky Highway Improvement Project.
4. Pregrading work between Cheakamus Canyon and Daisy Channel will commence in September 2004 and is scheduled for completion by the end of 2004.

1.5 Timetable to Financial Close

The anticipated timetable for the Consultation and Selection Process for the DBFO Project is set out in Table 1-2.

TABLE 1-2
Anticipated Timetable for the Consultation and Selection Process

Deliverable	Date
Initial Proponents' Meeting	May 26, 2004
Proponents' Site Tour	May 27, 2004
Draft of RFP - Volumes 3 and 4 issued	June 1, 2004
Workshop A – Focus on technical issues	June 23, 2004 June 24, 2004 June 25, 2004
Draft Volume 1 of RFP issued to Proponents	June 30, 2004
Workshop B – Focus on risk allocation, performance payment and further technical issues	July 20, 2004 July 21, 2004 July 22, 2004
Draft DBFO Agreement issued to Proponents	July 26, 2004
Draft RFP Issued to Proponents including: • Volume 1 – Instructions to Proponents • Volume 3 – Design and Construction Requirements • Volume 4 – Operation, Maintenance and Rehabilitation Requirements • Volume 5 – Quality Management System Requirements	August 31, 2004
Issue to Proponents: • Written response to comments submitted on Draft DBFO Agreement	September 8, 2004
Workshop C • Selected DBFO Agreement issues from the applicable Proponent	September 14, 2004 September 15, 2004 September 16, 2004
Issue to Proponents: • Revised DBFO Agreement, including Schedules completed to date • Preferred Proponent Agreement, including Escrow Schedule	September 24, 2004
Deadline for Proponents to submit comments on Revised DBFO Agreement, including Lenders' comments	October 15, 2004
Last day for Proponents to submit: • RFIs • Topic Meeting requests	October 22, 2004
Issue to Proponents: • Written response to comments submitted on Revised DBFO Agreement	October 27, 2004

TABLE 1-2
Anticipated Timetable for the Consultation and Selection Process

Deliverable	Date
Issue to Proponents: • Definitive DBFO Agreement	Not later than November 12, 2004
Issue to Proponents: Final RFP addenda for Technical Requirements (if required)	October 29, 2004
Closing Date for Proponents' Submittal A: • General Information • Technical Submission	November 16, 2004
Closing Date for Proponents' Submittal B: • Financial and Commercial Submission, including a commitment to enter into the Definitive DBFO Agreement • Design-Build Failsafe Proposal • Priced Amendments (optional)	December 17, 2004
Proponent with highest scored Proposal will be notified and invited to sign Preferred Proponent Agreement	January 20, 2005
Announcement of Preferred Proponent	January 27, 2005
DBFO Agreement Finalization Period with Preferred Proponent concludes and Preferred Proponent and Province sign DBFO Agreement	March 1, 2005
Financial Close	March 31, 2005

Note: All dates are subject to change.

2. What is the DBFO Project?

2.1 Overview

This Section 2 of the RFP provides the following information:

- Describes what DBFO Co must deliver in relation to the DBFO Project, including:
  - **Design and construction work** for the Highway (Section 2.2);
  - **Operation, maintenance, and rehabilitation services** for the Highway (Section 2.3); and
  - **Financing** for the design, construction, operation, maintenance, and rehabilitation of the Highway (Appendix 1D and Appendix 1F).

  The DBFO Project must be delivered in accordance with the requirements set out in this RFP, portions of which will be incorporated into the DBFO Agreement.
- Summarizes property acquisition arrangements and related information (Section 2.5).
- Describes certain requirements of the DBFO Project, including:
  - Highlights of some of the Technical Requirements as summarized in Section 2.6;
  - Communication and consultation requirements as set out in Section 2.7.

2.2 Design and Construction

DBFO Co will design and construct the New Works in accordance with the DBFO Agreement. This will involve, among other things, the provision of the resources, materials and equipment for the management, planning, and delivery of the design and construction of the New Works in accordance with the Design and Construction Requirements and the Quality Management System Requirements.

The scope of New Works includes both the minimum required scope of work identified in Section 2.2.1 (including the Olympic Requirements) as well as any additional works that DBFO Co commits to provide, as described in Section 2.2.2.

2.2.1 Minimum Performance Requirements

The Province has established the minimum acceptable level of improvements to be delivered under the DBFO Project (the Minimum Performance Requirements, or MPR). The Minimum Performance Requirements for the New Works include:

- provision of the minimum laning requirements summarized in Table 2-1;
- design and construction of the improvements in accordance with Volume 3:
  - some sections of the Highway must be constructed by DBFO Co and to the specified minimum highway design criteria;
  - some sections of the Highway do not require improvements. If DBFO Co elects to undertake improvements in these sections, the designer will conform to the specified desirable highway design criteria;
  - some sections of the Highway are already constructed to the required capacity and no further improvements are contemplated. However, if DBFO Co considers carrying out work within those sections, reference is provided to specified minimum criteria that would be applied during design;
- compliance with the requirements included in the EA Certificate;
- provision of the Olympic Requirements (summarized in Section 2.6.6); and
- compliance with the certified Quality Management System (Volume 5).

TABLE 2-1
Minimum Laning Requirements

Highway Section	Description	Minimum Laning Requirements
DB1	Horseshoe Bay to Sunset Beach	4 lanes
DB2	Sunset Beach to Lions Bay	Existing
DB3	Lions Bay to Brunswick Beach	4 lanes
DB4 DB5 DB6 DB7	Brunswick Beach to South Stawamus	Existing *plus, for the Olympic Period:* • third temporary lane with counter-flow
DB8	Urban Squamish: South Stawamus to Depot Road	4 lanes
DB9 DB10 DB11	Depot Road to Cheakamus Canyon North	Existing *plus, for the Olympic Period:* • 2 northbound lanes • 1 southbound lane
DB12 DB13	Cheakamus Canyon North to Function Junction	3 lanes *plus, for the Olympic Period:* • 2 northbound lanes • 1 southbound lane

2.2.2 Opportunities for Added Value

While the New Works may consist of only the MPR, the Province values additional infrastructure or enhanced performance standards that contribute to achieving the longer term Provincial Corridor Objective (PCO). The PCO represents the current best estimate of the transportation and other objectives of the Province with respect to the Highway. The PCO for safety, mobility, construction traffic management, and the environment is described in Appendix 1B. Table 2-2, although not exhaustive, summarizes some opportunities for innovation in design and construction which may be possible, including refinement of design, improvements in capacity, safety, and mobility, optimization of construction traffic management, or enhancement of environmental management.

Proponents are encouraged develop innovative solutions that will allow them to commit to providing additional infrastructure or enhanced performance standards that exceed the MPR. To the extent that these commitments are provided by the Preferred Proponent, this revised scope will be used to define the New Works.

Added value infrastructure or enhanced performance standards may be provided in two ways. DBFO Co could increase scope beyond the MPR and incorporate the additional infrastructure or enhanced performance standards into the work committed to be completed by the end of 2009. Alternatively, some or all of the additional work could be delivered after 2010 in which case DBFO Co will be required to contractually commit to a completion date for that additional work. In either case, the MPR must be satisfied by the Final Completion Longstop Date.

TABLE 2-2

Opportunities for DBFO Co Added Value

Highway Section	Description	Opportunities for DBFO Co Added Value Beyond MPR and Toward PCO
DB1	Horseshoe Bay to Sunset Beach	Enhanced safety improvements Enhanced mobility improvements Enhanced environmental and socio-community benefits
DB2	Sunset Beach to Lions Bay	Aesthetics
DB3	Lions Bay to Brunswick Beach	Enhanced safety improvements Enhanced mobility improvements Enhanced environmental and socio-community benefits

TABLE 2-2

Opportunities for DBFO Co Added Value

Highway Section	Description	Opportunities for DBFO Co Added Value Beyond MPR and Toward PCO
DB4 DB5 DB6 DB7	Brunswick Beach to South Stawamus	Enhanced safety improvements Noise mitigation in particularly sensitive areas where it is a community priority and where implementation is technically challenging Enhanced mobility improvements Upgraded passing opportunities Permanent third lane Accommodation of ultimate 4 lane split grade requirement (enhanced 2 lane option) Geotechnical reliability – catchment
DB8	Urban Squamish: South Stawamus to Depot Road	Enhanced safety improvements Enhanced environmental and socio-community benefits Noise mitigation
DB9 DB10 DB11	Depot Road to Cheakamus Canyon North	Safety improvements Mobility improvements
DB12 DB13	Cheakamus Canyon North to Function Junction	Enhanced safety improvements Enhanced mobility improvements Upgraded passing opportunities Enhanced environmental and socio-community benefits

2.2.3 Design and Construction by Others

The Province, through separate contractual arrangements with third party contractors, has arranged for certain improvements to the Highway to be undertaken in the MOT sections identified in Section 1.4. This Section 2.2.3 provides an overview of the following design and construction work by others:

- Test Section – Montizambert Creek to Strip Creek
- Section DB2 – Sunset Beach to Kelvin Grove (Lions Bay)
- Sections DB10 and DB11 – Culliton Creek to Cheakamus Canyon North
- Section DB12 – Pregrading Work

Information related to design and construction work by others is in the Data Room. New information will continue to be added to the Data Room as it becomes available.

2.2.3.1 Test Section – Montizambert Creek to Strip Creek

The 900 metre section between Montizambert Creek and Strip Creek, located within Highway Section DB2 (Sunset Beach to Kelvin Grove), is referred to as the Test Section. MOT initiated work on the Test Section in part to confirm the technical feasibility and validity of the traffic management regime and to test a number of key project success factors, including construction techniques, traffic management options, retaining wall designs, project scheduling assumptions, and general materials management approach. Final completion is scheduled for August 31, 2004.

2.2.3.2 Section DB2 – Sunset Beach to Kelvin Grove (Lions Bay)

Work under the design-build contract relating to that part the Highway between Sunset Beach and Kelvin Grove is expected to commence by September 2004 and be completed by Fall 2007. This work involves widening approximately 7.3 km of the Highway to four lanes and includes rock slope stabilization measures and highway and interchange improvements.

2.2.3.3 Sections DB10 and DB11 – Culliton Creek to Cheakamus Canyon North

The Province constructed improvements along a 7 km section of the Highway between Culliton Creek Bridge and Cheakamus Canyon North. The work included construction of an additional bridge, seismic upgrades to and replacement of the deck on the existing bridge, and improvements to the roadway alignment.

Work still ongoing in sections DB10 and DB11 includes rock blasting and removal of approximately 275,000 m^3 of rock from rock faces above and beside the Highway. The rock blasting and removal portion of the work is presently being carried out and is scheduled for completion by the end of 2004.

2.2.3.4 Section DB12 Pregrading Work

In order to advance the overall project schedule for completion of improvements by 2009, and to take advantage of the 2004 construction season, pregrading work will be carried out along an approximately 6 km long segment of the Highway between Cheakamus Canyon and Daisy Channel. It is expected that the work will commence in September 2004 and be completed by the end of 2004.

2.2.4 Responsibility for Work by Others

The DBFO Agreement will entitle DBFO Co to request that the Province, at the Province's discretion and at the expense and risk of DBFO Co, enforce claims for breach of warranty contained in the contracts for the work by others. To the extent that third party contracts permit, the Province may assign its rights under such third party contracts in order to permit DBFO Co to pursue such claims directly and at its own expense.

2.3 Operation, Maintenance, and Rehabilitation

DBFO Co will provide the operation, maintenance, and rehabilitation services for the Highway, and operation and maintenance services for Adjacent Side Roads and adjacent areas (jointly, the OMR Services), in accordance with the DBFO Agreement. This will involve, among other things, providing the resources, materials, and equipment to manage, plan, and deliver the OMR Services, in accordance with the operation, maintenance and rehabilitation requirements set out in Volume 4 and the Quality Management System requirements set out in Volume 5.

From the time the Highway and Adjacent Side Roads are removed from the existing operation and maintenance contract (no later than 120 days[2] after the Effective Date) until the end of the Project Term, DBFO Co will be responsible for providing the OMR Services for all 13 DB Sections of the Highway.

2.3.1 Minimum Performance Requirements

The Minimum Performance Requirements for the OMR Services include:

- day to day operation and maintenance of the Highway, Adjacent Side Roads, and Adjacent Areas;
- rehabilitation of the Highway, as required, to meet the Asset Preservation Performance Measures and the Handback Requirements;
- asset inspection and definition of resulting works program to be carried out by DBFO Co to address deficiencies;
- supply and placement of all materials associated with meeting the standards set out in Volume 4;
- supply of all applicable records and reports to the Province;
- identification, programming, prioritization, and delivery of maintenance and services necessary to achieve the Performance Measures specified in Volume 4; and,
- compliance with the certified Quality Management System.

2.3.2 Opportunities for Added Value

While the OMR Services may consist of only the MPR, the Province values enhanced services that contribute, in particular, to improved safety and mobility on the Highway or to superior preservation of the Highway assets. A discussion of what these enhanced services could be is included in Appendix 1B. In general, some opportunities for added value, which may be available with respect to the OMR Services, include the following:

---

[2] *The Province is required to, and intends to, provide 120 days prior notice in order to delete the Highway and Adjacent Side Roads from the Mainroad Contract. See also Section 2.3.3.*

- Exceed the Minimum Performance Requirements described in Section 2.3.1 resulting in direct mobility, safety, availability, or other benefits to the Province or the road users.
- Exceed the proposed Handback Requirements to provide lower Provincial maintenance and rehabilitation costs after the Project Term.
- Provide shorter response times with regard to day-to-day operational requirements, particularly with respect to maintenance activities, or implement additional value-added activities.

Proponents are encouraged develop innovative solutions that will allow them to commit to providing more than the minimum requirements set out in Volume 4. To the extent that these commitments are provided by the Preferred Proponent, this revised scope will be used to define the OMR Services.

2.3.3 Operation and Maintenance by Others

The status of the existing or contemplated third party contracts for operation, maintenance, and rehabilitation services for the Highway is summarized in this Section 2.3.3. Further information regarding these contracts is included in the Data Room.

Maintenance Contract

There is an existing contract (the Mainroad Contract) dated October 26, 2003 under which operation and maintenance services for Highway 99 (including the Highway) and secondary roads (including Adjacent Side Roads) are provided by Mainroad Howe Sound Contracting Ltd. (Mainroad) for the period from October 26, 2003 until October 25, 2013. It is the Province's intention, in accordance with the provisions set out in the Mainroad Contract, to sever the operation and maintenance obligations pertaining to the Highway and Adjacent Side Roads from the Mainroad Contract by providing the 120 day prior notice required under the Mainroad Contract. DBFO Co, through its operation and maintenance contractor, will assume full responsibility for operation, maintenance and rehabilitation of the Highway and Adjacent Side Roads from that time forward.

Pavement Marking

The Province has entered into a pavement marking services contract with Mainroad Pavement Marking Ltd. for Highway 99 (including the Highway) and secondary roads (including Adjacent Side Roads). It is the Province's intention, under the provisions set out in this contract, to remove the Highway and Adjacent Side Roads from that contract. DBFO Co will assume full responsibility for pavement marking from that time forward.

Electrical Maintenance Services

The Province currently maintains electrical field assets on the Highway using MOT staff but has initiated a competitive selection process to select a contractor to provide electrical maintenance services in connection with a number of highways and roads, including the Highway and Adjacent Side Roads. It is the Province's intention to set out provisions in the electrical maintenance services

contract that allows removal of the Highway from that contract. DBFO Co may then (at its option) enter into a sub-contract with the electrical maintenance services contractor directly or undertake electrical maintenance services itself, or through contractors of its choosing.

2.4 Features of the DBFO Agreement

The DBFO Agreement will set out the commercial rights and obligations of the parties in connection with the DBFO Project. Volume 3, 4, and 5 of the RFP and portions of the Preferred Proponent's Proposal will be used to produce schedules to the DBFO Agreement.

2.4.1 Project Term

The term of the DBFO Agreement will be from the Effective Date until March 31, 2030, the Termination Date, unless terminated earlier in accordance with the provisions of the DBFO Agreement.

2.4.2 DBFO Project Key Dates

Table 2-3 summarized key dates of the DBFO Project.

TABLE 2-3
DBFO Project Key Dates

Base Date	December 31, 2004
Effective Date	The date on which the DBFO Agreement becomes effective.
Substantial Completion of New Works	June 30, 2009
Substantial Completion of Olympic Requirements	The date to be specified in the DBFO Agreement.
Final Completion of Minimum Requirements for New Works (Final Completion Longstop Date)	October 31, 2009
Final Completion of Olympic Requirements	The date to be specified in the DBFO Agreement (and prior to the start of the Olympic Period).
Final Completion of Post-Olympic Works	June 30, 2010

2.5 Project Lands

2.5.1 The Highway

The Highway consists of:

a) Portions of the existing Highway 99 between Horseshoe Bay in West Vancouver and Function Junction in Whistler;

b) Lands that will comprise the permanent right-of-way in Sections 1, 3, 5, 6, 7, 8, 12, and 13 as identified in the right-of-way drawings for MOT's preliminary design referred to in Appendix 3B of Volume 3 of this RFP and which the Province is in the process of acquiring or will acquire in accordance with the Summary Baseline Construction Schedule which is available to Proponents in the Data Room; and

c) Lands that will comprise the permanent right-of-way and are located within the Proposed Right-of-Way in Section DB4 which will be acquired by the Province in accordance with the procedure described in Section 2.5.3 below.

2.5.2 Land Acquisition Procedure for the Highway Except DB4

The Province's Summary Baseline Construction Schedule includes a timetable enumerating what it expects to be the earliest dates by which it will be in a position to acquire Highway lands within the Proposed Right-of-Way. Proponents will be required to submit with their Proposals a schedule (included in the New Construction Work Schedule) indicating the respective dates by which they require the lands to be acquired by the Province within each of those DB Sections. If the acquisition dates shown in a Proponent's New Construction Work Schedule require land in any of the relevant DB Sections to be acquired earlier than the dates shown in the Summary Baseline Construction Schedule, any earlier acquisition will be DBFO Co's cost and risk.

2.5.3 Land Acquisition Procedure for Section DB4

The preliminary design and associated mapping has not been completed to a level that property requirements can be defined within the limits of Section DB4 (Brunswick Beach to Porteau Cove). As part of their Proposals, Proponents will submit a design for what they propose to build in Section DB4 and associated right-of-way requirements.

Following entering into the DBFO Agreement, DBFO Co must submit right-of-way acquisition drawings, including cross sections and elevations, not less than 12 months before DBFO Co requires access to the right-of-way to facilitate construction. The Province will acquire, at the Province's cost, the identified lands, within the Proposed Right-of-Way, in accordance with DBFO Co's proposed property acquisition schedule included in its New Construction Work Schedule.

2.5.4 Acquisition of Other Lands

If DBFO Co at any time wishes to acquire any land outside the Proposed Right-of-Way for the purpose of adding the land to the Highway or Adjacent Side Roads, it may, with the prior consent of the Province, acquire such land. Unless otherwise agreed between the Province and DBFO Co, the cost of acquiring the additional land will be borne by DBFO Co but (except in the circumstance referred to below) following any such acquisition, the lands acquired will be added to the lands comprising the Highway and the Adjacent Side Roads, and will become the property of the Province.

2.5.5 Compliance with Requirements of EA Certificate

Any proposed Highway alignment and corresponding requisite land acquisition program must comply with the provisions of the EA Certificate and related commitments. DBFO Co must therefore provide satisfactory evidence to the Province that any lands identified for acquisition in the manner contemplated in Sections 2.5.3 or 2.5.4 above will not require the amendment of the EA

Certificate or an application for a new certificate. Reference is made to Section 2.6.4 below for additional information on environmental considerations.

2.5.6 DBFO Co's Rights in Highway Lands

Under the DBFO Agreement, DBFO Co will be granted a non-exclusive licence from the later of the Effective Date, or, the date of acquisition of Highway lands acquired subsequently to the Effective Date, to have access to and use of such part of the Site and the Adjacent Areas as may be required to carry out its obligations under the DBFO Agreement.

DBFO Co may from time to time identify potential commercial and other opportunities in connection with the DBFO Project. Where DBFO Co identifies potential Business Opportunities, they will be considered by the Province however, unless otherwise agreed, all commercial and other rights and opportunities related to the Highway, the Site and Adjacent Areas are retained by the Province.

2.6 Selected Technical Requirements

This Section 2.6 highlights the following selected technical requirements associated with the DBFO Project:

- Securing Permits, Licences, and Approvals
- Utilities and Related Infrastructure
- Quality Management System
- Environmental Considerations
- Traffic Management
- Olympic Requirements
- Rock Slope Stabilization Program
- Use of MOT Pits and Quarries
- Handback Requirements

2.6.1 Securing Permits, Licences, and Approvals

DBFO Co is responsible for obtaining and maintaining all Permits, Licences, and Approvals required for the DBFO Project, except as otherwise stated in the DBFO Agreement.

2.6.2 Utilities and Related Infrastructure

DBFO Co is responsible for securing all temporary and permanent utilities and for temporarily or permanently relocating utilities required for the DBFO Project. DBFO Co is required to observe and be bound by the terms of any utility agreements existing or entered into between the Province and any utility company. Information regarding utilities is available in the Data Room.

2.6.3 Quality Management System

DBFO Co will be required to develop and implement a quality management system in accordance with the requirements of ISO 9001:2000 International Standard for Quality Management Systems (the Quality Management System). DBFO Co will be responsible for all quality assurance and quality control activities required to manage its own processes, as well as those of its subcontractors and suppliers for the DBFO Project. DBFO Co's Quality Management System must be certified by an accredited certification agency and the certification must be retained throughout the Project Term. The Quality Management System must be fully documented within 90 days of the Effective Date, fully implemented within 180 days of the Effective Date, and certified within 365 days of the Effective Date.

DBFO Co will undertake internal and external quality audits of the Quality Management System throughout the Project Term as required under the DBFO Agreement.

Volume 5 of the RFP contains further details regarding the Quality Management System requirements for the DBFO Project.

2.6.4 Environmental Considerations

The Sea-to-Sky Highway Improvement Project completed a joint environmental assessment review under the British Columbia Environmental Assessment Act and the Canadian Environmental Assessment Act. An environmental assessment certificate under the British Columbia Environmental Assessment Act (the EA Certificate) and a screening level decision letter under the Canadian Environmental Assessment Act were issued in June 2004.

For an understanding of the environmental assessment application and the terms and conditions of the EA Certificate, Proponents should review the information set out in the Data Room. Proponents should pay particular attention to Table 1 of the EA Certificate, Owner's Commitments and Responsibilities. The preceding and other material is available for viewing on the following website:

http://www.eao.gov.bc.ca/epic/output/html/deploy/epic_project_home_192.html

The DBFO Agreement will require that DBFO Co comply with the terms and conditions of the EA Certificate and must ensure satisfaction of the owner's commitments and responsibilities contained in Table 1 of the EA Certificate. DBFO Co is required to obtain all additional permits and approvals which relate to, or are required in connection with, the DBFO Project, unless otherwise indicated in Section 5.1.3.

Volume 3 of the RFP contains further details regarding the environmental requirements for the DBFO Project.

2.6.5 Traffic Management

DBFO Co is responsible for minimizing traffic delays and maximizing predictability of traffic delays throughout the Project Term. The traffic management regime in Section 3.2.1 of Volume 3 identifies permitted types and

times of traffic stoppages and conditions for such stoppages. DBFO Co must develop a Traffic Management Plan that is consistent with the required traffic management regime defined in Volume 3, initially in outline form as part of its Proposal and later in a detailed form that will form part of a schedule to the DBFO Agreement. DBFO Co is required to co-ordinate its Traffic Management Plan with other contractors retained by MOT and concurrently working on the Highway, including the contractor engaged by MOT to carry out design-build work in Section DB2.

DBFO Co's success in adhering to its Traffic Management Plan is reflected in the Payment Mechanism, as described in Section 3.2.4. Failure to adhere to the Traffic Management Plan will subject DBFO Co to penalties pursuant to the conditions set out in Section 3.2.1.6 of Volume 3.

2.6.6 Olympic Games Requirements

The Olympic Winter Games and the Winter Paralympic Games (the Olympic Games) will take place in Whistler and Vancouver over the course of several weeks in February and March 2010. This section provides an overview of the Olympic Requirements; they are defined further in Volumes 3 and 4.

As outlined in the Vancouver 2010 Bid Book, the Province has committed to provide, at a minimum, a three-lane roadway throughout the Highway for the duration of the Olympic Period to accommodate the increased traffic flow resulting from the Olympic Games. The minimum laning requirements (summarized in Table 2-1) provide for three lanes throughout most of the Highway except for a stretch between Brunswick Beach and Furry Creek, where DBFO Co must provide at least a temporary third lane to meet the Olympic Requirements. Due to the physical constraints along certain segments of the Highway between Brunswick Beach and Furry Creek, it may not be feasible to provide three lanes that conform to the Design and Construction Requirements. If a Proponent believes it is not feasible, it may be possible to construct a temporary third lane on Rail Lands and Railbed Assets in this location for use during the Olympic Period. The Province is presently negotiating with BC Rail Partnership regarding access to Rail Lands and Railbed Assets for the Olympic Period. Further information is available in the Term Sheet – Highway 99 Provisions and the Term Sheet – General Access Provisions which are available in the Data Room. The term sheets allow for a 60 day interruption of rail traffic. This length of time encompasses the Olympic Period and such additional time necessary for commissioning/decommissioning of the temporary third lane.

The Vancouver 2010 Bid Book also stipulates that a reversible counter-flow system will be required for the three lane sections south of Squamish during the Olympic Period. Specifically, two lanes north-bound during the morning peak hours and two lanes south-bound during the evening peak hours will be required.

The design and construction of the road work required to provide the increased short-term capacity must be completed prior to the start of the Olympic Period (substantial and final completion dates for Olympic Requirements are as set out in Section 2.4.2) and must remain in operation throughout the Olympic Period. Following the Olympic Period, any part of the Highway that was designed and constructed solely for the Olympic Period must be converted to the required

permanent condition within the timeframe specified in Section 2.4.2 unless the Proponent's design contemplates a permanent three lane solution that conforms to the Design and Construction Requirements, in which case no conversion in respect of such permanent three lane solution will be necessary.

2.6.7 Rock Slope Stabilization Program

DBFO Co will be responsible for implementing the provincial rock slope program comprising identification, rock slope remediation, monitoring, prioritization and mitigation works for the duration of the Project Term in accordance with the requirements described in Section 11 of Appendix 4F. DBFO Co will be required to develop an annual rock slope stabilization program in accordance with and consistent with the Provincial Rock Slope Stabilization Policy to the allowance value identified in Section 3.3 (detailed further in Section 11.2 of Appendix 4F). The rock slope stabilization program must be provided to the Province for review no later than November 30 of the year prior to the construction year.

2.6.8 Use of MOT Pits and Quarries

DBFO Co may use MOT's pits and quarries along the corridor for construction staging and aggregate processing, including extraction of materials, during construction, operation, maintenance, or rehabilitation activities on the Highway. Should DBFO Co choose to use MOT's pits and quarries, it must do so in accordance with the conditions set out in Section 3.1.1.4 of Volume 3 and in Section 14 of Appendix 4F and pay $\$1.75/m^3$ for materials extracted up to 2010. Beyond 2010, the cost for extracted material will be determined by MOT on application by DBFO Co for material.

2.6.9 Handback Requirements

Performance standards for the condition of the Highway at the end of the Project Term (the Handback Requirements) are set out in Volume 4 and in the DBFO Agreement. The Province has established a holdback process that will, if DBFO Co is not on schedule for achieving the Handback Requirements, ensure that funds are available to achieve the Handback Requirements at the end of the Project Term. The procedure for reviewing the condition of the Highway, correcting any required deficiencies, and the establishment of a retention account to ensure completion prior to the end of the Project Term, is set out in detail in the DBFO Agreement.

2.7 Communication and Consultation with the Public and Stakeholders

Over the last two years, the Province has communicated and consulted with communities, businesses, and residents along the corridor about improvements to the Highway. To date, representatives of the Province's project team have attended more than 350 meetings with the public and Stakeholders. Background information on communication and consultation can be found at the Sea-to-Sky Highway Improvement Project website (**www.seatoskyimprovements.ca**) and the Environmental Assessment Office website (**www.eao.gov.bc.ca**). The Province

and DBFO Co will, throughout the Project Term, share certain responsibilities for communication and consultation in the manner described in this Section 2.7. It is anticipated that this approach will provide communities, businesses, residents and other Stakeholders with an efficient and consistent approach to communication and consultation and will provide continuity with past experience on the Sea-to-Sky Highway Improvement Project.

2.7.1 Categories of Communication and Consultation

There are four principal categories of communication and consultation:

1. ***Traffic Communication*** – Traffic communication involves providing timely, accurate information to the public and Stakeholders regarding current and expected traffic conditions for the Highway, particularly regarding delays and closures associated with construction and maintenance.

2. ***Community Relations*** – Community relations involves ongoing two-way communication with the public and Stakeholders. This includes dealing with ongoing public inquiries, problem solving, project updates, and regular public reporting. It is distinct from public and Stakeholder consultation.

3. ***Public and Stakeholder Consultation*** – Public and Stakeholder consultation involves gathering input from the public and Stakeholders on the scope and nature of the Highway improvements, including comments on design options, pre-design, preliminary design, and detailed design. This is consistent with the approved corridor-wide Community Consultation Plan (2004) which is available in the Data Room. Various features of the design at both the conceptual and preliminary stages were brought to the municipalities for their consideration and input. From this process, the Province committed to the municipalities that certain design features or design constraints would be implemented. Commitments made by the Province to the municipalities in this regard were incorporated into the Design and Construction Requirements set out in Volume 3.

4. ***Media Relations*** – Media Relations involves interaction with and responding to requests from the media.

2.7.2 Lead and Supporting Roles

Within each category of communication and consultation, DBFO Co will play either a lead or a supporting role, in each case working with the Province to provide communication and consultation services.

Lead role responsibilities include:

- Developing communication and consultation plans (and, where DBFO Co is in the lead, obtaining approval by the Province) and implementing approved communication and consultation plans.

- Establishing and maintaining constructive relationships with the public and Stakeholders.

Supporting role responsibilities include:

- Assisting with the development of communication and consultation plans.
- Conducting DBFO Project activities in a manner consistent with communication and consultation plans.
- Maintaining constructive relationships with the public and Stakeholders and supporting the lead party and its team members as the primary contact with the public and Stakeholders.
- Providing information, as required by the lead party and its team members, to support all communication activities.
- Attending community consultation meetings and other community relations meetings, as necessary, throughout the Project Term.
- Consideration of public and Stakeholder input throughout the Project Term and reporting to the public and Stakeholders regarding the manner in which public and Stakeholder input will be used.

Traffic Communication

From the Effective Date until the end of the Olympic Period, the Province will take the lead role in traffic communication, while DBFO Co will take the supporting role. DBFO Co's obligation is to support the Province including the provision of information with respect to its Traffic Management Plan, so that the Province can provide clear, timely, and proactive information to the public regarding the implementation of DBFO Co's Traffic Management Plan.

Following the Olympic Period, DBFO Co will have full responsibility (both the lead and supporting roles) for traffic communications.

Community Relations

From the Effective Date until the end of the Olympic Period, the Province will take the lead role in community relations, while DBFO Co will take the supporting role. DBFO Co will assist the Province in implementing a comprehensive community relations program to provide the public and Stakeholders with project information on a regular basis and to handle public inquiries and concerns.

Following the Olympic Period, DBFO Co will have full responsibility (both the lead and supporting roles) for community relations.

Public and Stakeholder Consultation

From the Effective Date until the end of the Olympic Period, the Province will take the lead role in public and Stakeholder consultation, while DBFO Co will take the supporting role. DBFO Co's obligation is to support the Province, including the provision of consultation materials regarding pre-design, preliminary design, and detailed designs, and attendance and participation in consultation activities, such as small group meetings, open houses, and council presentations.

Information regarding recent community consultation (pre-design consultations) in West Vancouver, Lions Bay, is available at **www.seatoskyimprovements.ca**. Pre-design consultation in Squamish and Pine Crest/Black Tusk is scheduled for Fall 2004.

Following the Olympic Period, DBFO Co will have full responsibility (both the lead and supporting roles) for public and Stakeholder consultation.

Media Relations

The Province is responsible for, and will take the lead role in, media relations throughout the Project Term. DBFO Co will support the Province in media relations by responding to issues and providing information as needed.

2.8 First Nations (confidential, material to negotiations)

This section of the RFP is confidential to protect the competitive selection process and to ensure information that may be material to negotiations remains confidential.

3. What are the Payment Arrangements?

This Section 3 describes how the Province will pay DBFO Co for delivering the DBFO Project. The payment DBFO Co will receive (the Total Performance Payment) will be based on DBFO Co's performance throughout the Project Term and will be capped at the Annual Affordability Ceiling which is defined in Section 3.1. An overview of the Total Performance Payment is presented in Section 3.2 while a detailed description is provided in Appendix 1D.

The Total Performance Payment, which is aligned with the project success factors, includes delivering all components of the New Works and OMR Services in accordance with the DBFO Agreement as well as providing for a provisional fund for additional work. The provisional fund is described in Section 3.3 and the additional work will be carried out in accordance with the DBFO Agreement.

3.1 Annual Affordability Ceiling (confidential, material to negotiations)

This section of the RFP is confidential to protect the competitive selection process and to ensure information that may be material to negotiations remains confidential.

3.2 Total Performance Payment

This Section 3.2 presents an outline of the Payment Mechanism (set out in detail in Appendix 1D) for determining the performance payment that will be paid to DBFO Co. DBFO Co will receive performance payments during both the construction and operation periods. The performance payments will increase incrementally to reflect the increased service provided by DBFO Co as sections are completed on the Highway. Once the entire Highway is complete and fully operational, as reflected in the Final Completion Certificate, DBFO Co will be eligible for the Total Performance Payment.

3.2.1 Overview

The sum paid to DBFO Co in any year (the Total Performance Payment) will be linked to the:

- performance of DBFO Co in:
  - keeping the Highway available for use, free flowing, and maintained to the standard specified in the DBFO Agreement;
  - meeting the Traffic Management Plan during construction;
  - meeting and exceeding the First Nations Employment and Business Development Targets during construction;
  - meeting construction milestones;

- number of vehicles using the Highway; and,
- safety record of the Highway.

The Total Performance Payment will be made up of three main components:

- Availability Payment
- Vehicle Usage Payment
- Performance Incentive Payments

These components are discussed below in Sections 3.2.2 to 3.2.4, respectively, and are described in more detail in Appendix 1D.

Payment to DBFO Co of the various components of the Total Performance Payment under the Payment Mechanism will be made at annual, quarterly, or monthly intervals, as indicated in Table 3-2. For purposes of performance monitoring and determination of performance payments, the Highway was divided into eight sections, the PM Sections, which are described in detail in Appendix 1D. Proponents may use alternate Highway segments that better suit their proposed design and construction schedule whilst not altering the risk profile of the mechanism.

TABLE 3-2
Total Performance Payment Components

Payment Component	Frequency of Payment	Period of Payment
Availability Payment	Monthly	From Substantial Completion of the relevant PM Section to Termination Date
Vehicle Usage Payment	Monthly	From Final Completion of the New Works to Termination Date
Performance Incentive Payments, including:		
• Traffic Management Payment	Quarterly	From Effective Date until Substantial Completion of the New Works
• Safety Performance Payment	Annual	From Final Completion of Post-Olympic Works to Termination Date
• Other Bonus Payment	Annual	From Effective Date until Substantial Completion of the New Works
End of Term Payment	Once	Termination Date

3.2.2 Availability Payments

Proponents will be required to propose an annual availability payment (the Maximum Availability Payment) representing 80-85% of the expected Total Performance Payment paid to DBFO Co. The Maximum Availability Payment will be payable on a monthly basis commencing upon Substantial Completion of relevant PM Sections of the Highway and will be subject to deductions for non-availability by PM Section and for under-performance of the entire Highway as measured against the operation and maintenance specifications, detailed in Volume 4.

Availability deductions are comprised of:

- a Non-Availability Deduction, being the sum of:
  - a Rural Area Deduction (applied by Highway PM Section);
  - an Urban Area Deduction (applied by Highway PM Section); and
- an Operation and Maintenance Performance Deduction (applied on the basis of the entire Highway).

The actual availability payment (the Availability Payment) to be made to DBFO Co will be calculated as follows:

AP	=	**MAP**	–	**NAD**	–	**OMPD**
Availability Payment		Maximum Availability Payment		Non-Availability Deduction		Operation and Maintenance Performance Deduction

The sum of the Non-Availability Deduction and the Operation and Maintenance Performance Deduction cannot exceed the Maximum Availability Payment for the relevant day.

In the calculation of the Rural Area Deduction and the Urban Area Deduction, each PM Section is categorized as either Rural or Urban, as identified in Appendix 1D.

Rural Area Deduction

In the case of a PM Section categorized as Rural, availability will be calculated based on the Traffic Flow in that Highway section. A deduction (the Rural Area Deduction) will be applied when the variation in Traffic Flow through a section falls below a predetermined threshold. The Rural Area Deduction applies only following Final Completion of the New Works.

Urban Area Deduction

In the case of a PM Section categorized as Urban, availability will be calculated based on physical monitoring and lane availability in that section. A deduction (the Urban Area Deduction) will be applied when a lane becomes unavailable for use. Prior to Final Completion of the New Works, the Urban Area Deduction applies to both Urban and Rural PM Sections.

Operation and Maintenance Performance Deductions

The performance of DBFO Co in undertaking operation and maintenance for the entire Highway, in accordance with the operation and maintenance specifications in Volume 4, will be evaluated on a monthly basis. This evaluation will be used to calculate a deduction (the Operation and Maintenance Performance Deduction), if any, from the monthly Maximum Availability Payment.

DBFO Co will be required to identify and record all Non-Conforming Events which will be categorized and awarded points based on the severity of the event. DBFO Co will receive a monetary deduction once the level of points awarded for Non-Conforming Events exceeds a stipulated threshold. An increasing deduction will apply to each point above that threshold.

3.2.3 Vehicle Usage Payment

Following Final Completion of the New Works, a monthly payment will be made based on the vehicle usage of the Highway (the Vehicle Usage Payment). The Vehicle Usage Payment will be based on traffic bands for a single class of

vehicle with Long Vehicles being weighted at three times the level of Other Vehicles.

Proponents are required to propose up to four traffic bands, specifying the upper and lower limits of usage and the relevant payment per vehicle in each band. The proposed banding structure must not provide for a guaranteed usage payment. The variability in Vehicle Usage Payments should demonstrate that DBFO Co is accepting risk on traffic volumes. The payment per vehicle in the upper band will be set to zero to cap the overall amount of the payment.

The Vehicle Usage Payment, based on the expected traffic volume, will represent not more than 15% and not less than 10% of the expected Total Performance Payment in accordance with the Payment Mechanism set out in Appendix 1D.

3.2.4 Performance Incentive Payment

The Province has structured the Payment Mechanism such that it will provide an incentive (the Performance Incentive Payment) to DBFO Co to meet and exceed some of the project objectives. The Performance Incentive Payment is comprised of the following three elements, each of which is discussed below and described in more detail in Appendix 1D:

- Traffic Management Payment
- Other Bonus Payment
- Safety Performance Payment

Traffic Management Payment During Construction

During the period of construction (until Substantial Completion), DBFO Co will receive a payment (the Traffic Management Payment) based on its performance in adhering to the Traffic Management Plan to which it has committed in the DBFO Agreement.

In determining the amount of the Traffic Management Payment, DBFO Co will be assessed on the basis of the actual number of stoppages and closures that occurred during the relevant quarter compared to the number of stoppages and closures that were set out in the Traffic Management Plan. The assessment utilizes levels of weighted closures which are calculated in a manner defined in detail in Appendix 1D.

If DBFO Co succeeds in achieving a level of weighted closures, based on the actual closures in the relevant quarter, that is less than or equal to the level committed to in the Traffic Management Plan, DBFO Co will receive the full Traffic Management Payment, as set out in Table 3-3 (confidential, material to negotiations).

If DBFO Co achieves a level of weighted closures, based on the actual closures in the relevant month, that exceeds the level committed to in the Traffic Management Plan, then the Traffic Management Payment will be reduced as set out in Table 3-4 (confidential, material to negotiations).

Safety Performance Payment During Project Term

The safety performance of the Highway can be measured by comparing the actual number of reported vehicle accidents resulting in personal injury with the Provincial five-year average for similar highways. If the measured rate is less than the reference rate, the Province will pay to DBFO Co an agreed amount subject to partial indexation in accordance with the Payment Mechanism (the Safety Performance Payment).

3.2.5 End of Term Payment

The Province is considering various end of term options which will be described in greater detail in the revised DBFO Agreement to be issued on or about September 24, 2004.

3.3 Provisional Funds (confidential, material to negotiations)

This section of the RFP is confidential to protect the competitive selection process and to ensure information that may be material to negotiations remains confidential.

3.4 Tax Issues

Each Proponent is responsible for obtaining and relying on tax advice from its own advisors and experts, including obtaining such of its own advance interpretations and rulings from the Canada Revenue Agency and the British Columbia Consumer Taxation Branch in relation to the DBFO Project (including in relation to the proposed structure and its tax consequences) as it considers appropriate or necessary.

3.5 Goods and Services Tax

The supply of all property and services by DBFO Co to the Province under the DBFO Agreement will not be subject to GST. As such, DBFO Co will not be required to charge GST to the Province.

4. What is the Consultation and Selection Process?

The Consultation and Selection Process has been implemented by the Province to give Proponents and the Province the opportunity to exchange information, engage in dialogue, and clarify issues related to the RFP, including the form of the DBFO Agreement.

The Consultation and Selection Process is governed by the terms and conditions set out in the Bidding Agreement, the form of which is included in Appendix 1G. Proponents were required to sign and return to Partnerships BC the Bidding Agreement prior to receiving the RFP and participating further in the Consultation and Selection Process.

All questions, inquiries, comments, requests for information, requests for clarification, and other communications regarding the RFP, including the form of the DBFO Agreement, must be in writing and directed to the Contact Person designated in Section 5.3.

4.1 Proponent Consultation Process

Recognizing the importance of Proponent input to the success of the Consultation and Selection Process, the Province has implemented a proponent consultation process by which the Province and Proponents have the opportunity to exchange information, engage in dialogue, and clarify issues related to the RFP, including the form of the DBFO Agreement. The proponent consultation process includes Workshops and Topic Meetings, the rules and protocols for which have been established and set out in the Bidding Agreement, including provision for waivers and acknowledgement of the non-binding nature of all discussions at Workshops and Topic Meetings.

To date, the Province has held one general information meeting, two series of Workshops and several series of Topic Meetings with the Proponents. Topic Meetings will continue to be held on specific topics from time to time. All Proponents are notified of topics as they are determined, and Proponents also have the opportunity to propose additional topics and request additional Topic Meetings.

A third Workshop, Workshop C, is scheduled to take place on or about September 14, 15, and 16, 2004.

As part of the proponent consultation process, Proponents have been invited to comment on:

- draft issues of RFP Volumes 1, 3, 4, and 5;
- draft issues of the DBFO Agreement, issued as Volume 2 of the RFP;

4.2 Development of the DBFO Agreement

4.2.1 Draft DBFO Agreement

The Draft DBFO Agreement was issued as Volume 2 of a draft RFP and distributed to Proponents on July 26, 2004. Each Proponent was invited to provide a mark-up of the Draft DBFO Agreement, incorporating all of the Proponent's comments, corrections, and proposed amendments (Initial Proposed Amendments) on August 13, 2004.

The Province has scheduled Workshop C to provide a forum for discussion with Proponents of their Initial Proposed Amendments. Prior to this workshop, the Province intends to provide a written response to each Proponent in respect of its Initial Proposed Amendments. The Province will incorporate those Initial Proposed Amendments which are acceptable to the Province and will reissue the DBFO Agreement (the Revised DBFO Agreement) by way of Addendum on or about September 24, 2004.

4.2.2 Revised DBFO Agreement

Following publication of the Addendum containing the Revised DBFO Agreement, each Proponent is required to provide a final set of proposed amendments (the Proposed Amendments) arising from the amendments that were made by the Province to the Draft DBFO Agreement. Proponents' Proposed Amendments must be accompanied by letters from their respective Funders and Funders' legal counsel in the form prescribed in the Bidding Agreement. All Proposed Amendments must be submitted to the Contact Person by October 15, 2004 in the form of a mark-up of the Revised DBFO Agreement accompanied by an explanatory memorandum.

The Province will review each Proponent's Proposed Amendments and may, in its discretion, schedule a Topic Meeting with any or all of the Proponents to discuss or seek clarification of their respective Proposed Amendments. The Province will provide a written response to each Proponent in respect of its Proposed Amendments on or about October 27, 2004.

The Province will issue an Addendum to the RFP on or about November 12, 2004 containing a form of DBFO Agreement that incorporates all Proposed Amendments that are acceptable to the Province along with any other amendments that the Province, in its discretion, determines are necessary or advisable (the Definitive DBFO Agreement). The Definitive DBFO Agreement, without amendment, is to be used by Proponents as the basis for their Proposals.

4.2.3 Preferred Proponent and Finalization of DBFO Agreement

Following completion of the Evaluation Process, the Province will notify the Proponent which submitted the highest scored Proposal that, upon execution by that Proponent of the Preferred Proponent Agreement within 48 hours of such notification, it will be selected as the Preferred Proponent.

The Preferred Proponent Agreement, which the Province anticipates will be issued as an Addendum to the RFP on or about September 24, 2004, will provide

for a period which will extend from the date of delivery of the executed Preferred Proponent Agreement up to March 1, 2005 (the DBFO Agreement Finalization Period) during which the Proponent may propose certain changes to the Definitive DBFO Agreement which do not affect risk allocation, statutory or legal requirements or other matters of a material or substantive nature identified by the Preferred Proponent Agreement as not subject to change. The Preferred Proponent Agreement will also contain an express acknowledgement that, if the parties are unable to reach agreement on the Preferred Proponent's proposed changes within the DBFO Agreement Finalization Period, the Preferred Proponent Agreement will terminate and the Province will be entitled to either enter into a Preferred Proponent Agreement with the Proponent which submitted the second highest scored Proposal or pursue one of the other options identified in this RFP.

Following successful completion of the DBFO Agreement finalization process pursuant to the Preferred Proponent Agreement, the Province will invite the Preferred Proponent to execute the DBFO Agreement with the Province and BCTFA. The executed DBFO Agreement will be held in escrow (pursuant to the terms of an escrow agreement which will be attached as a schedule to the Preferred Proponent Agreement) pending satisfaction of any escrow conditions and achievement of Financial Close.

4.2.4 Priced Amendments

A Proponent may submit, together with (but not forming part of) its Proposal, in a separate sealed envelope, proposed amendments to any part of the Definitive DBFO Agreement that the Proponent considers would offer value for money to the Province (Priced Amendments). Any such submission must include a calculation showing how the pricing of the Proponent's Proposal would be affected in respect of each Priced Amendment.

Priced Amendments will not in any way be considered during the Evaluation Process and the sealed envelope containing them will not be opened by the Province until after execution of the DBFO Agreement as described in the preceding section. Only then will the Province, in its discretion, review any Priced Amendments submitted by the Preferred Proponent. Following any such review, if the Province (in its discretion) is prepared to change the DBFO Agreement to incorporate any Priced Amendment, the DBFO Agreement will be amended accordingly.

4.2.5 Contract Closing Period

The DBFO Agreement is subject to the Province obtaining all necessary governmental authorizations and approvals required in connection therewith, including the following:

- Any approvals required under the *Financial Administration Act*, R.S.B.C. 1996, c. 138.
- Issuance by the Lieutenant Governor in Council of an Order in Council made under the TIA.

- Any regulatory or other approvals required under the laws of the Province of British Columbia.

Any required regulatory and other approvals may be obtained by the Preferred Proponent and the Province (as applicable) prior to Financial Close.

4.3 Proposal Submission Requirements

This Section 4.3 provides an overview of the Proposal submission requirements. Appendix 1F contains detailed information regarding Proposal submission requirements, including:

- formatting, packaging, and other guidelines;
- general information on topics such as changes to the Proposal prior to the Closing Time, the procedure for changes to the Proponent's team since the RFQ Submission, and validity of Proposals;
- proposal forms to be submitted together with the Proposal (included as Appendix 1E);
- Mandatory Submission Requirements; and,
- Minimum Performance Requirements.

Proposals must be delivered in two submittals, consisting of the following packages, and as described in Appendix 1F:

Submittal A (no price information in Submittal A):

- Package 1 – General Information
- Package 2 – Technical Submission

Submittal B:

- Package 3 – Financial and Commercial Submission
- Package 4 – Design-Build Failsafe Proposal for DB12/DB13
- Package 5 – Priced Amendments (Optional, not part of the Evaluation Process)

Proponents must prepare their Proposals (other than Package 4) on the basis of the Definitive DBFO Agreement. Only Proposals which comply with all provisions of this RFP will be accepted for consideration. The Province's determination as to whether or not a Proposal is acceptable will be based upon the RFP and the Proponent need not be consulted.

The Design-Build Failsafe Proposal is a separate, independent proposal for the design and construction of sections DB12 and DB13. All Proponents must submit, as part of their Conforming Proposal, a Design-Build Failsafe Proposal in accordance with the request for proposal provided in Appendix 1C – Design-Build Failsafe RFP.

The submission of any Priced Amendments, as described in Section 4.2.4, is optional. If a Proponent chooses to submit Priced Amendments, it must do so in accordance with Appendix 1F and the submission must be sealed in a separate envelope that will not be opened until after execution of the DBFO Agreement. Priced Amendments will in no way be part of the Evaluation Process.

4.4 Closing Time and Closing Location for Proposals

Proposals must be received at the following address (the Closing Location), addressed to the Contact Person, at or before the Closing Time:

Sea-to-Sky Highway Improvement Project
DBFO Project
Response to Request for Proposals

Sea-to-Sky Highway Improvement Project Office
#1300 – 1075 West Georgia Street
Vancouver, BC V6E 3C9
Canada

The Closing Time is defined as:

- In the case of Submittal A: 2:00 p.m. local Vancouver time on November 16, 2004; and
- In the case of Submittal B: 2:00 p.m. local Vancouver time on December 17, 2004.

If either or both of Submittal A or Submittal B of a Proposal is received after the applicable Closing Time, that Proposal will not be a Conforming Proposal and therefore will not be considered and will be returned unopened.

Faxed, telephone or electronic Proposals will not be accepted in response to this RFP. Amendments to either Submittal A or Submittal B of Proposals must be received at the Closing Location before the relevant Closing Time. Faxed, telephone or electronic amendments will not be accepted.

The calendar and clock designated as the official calendar and clock by the Province at the Closing Location, whether accurate or not, will be determinative with respect to whether Submittal A or Submittal B of Proposals, including any amendments, have been received at the Closing Location before the Closing Time. It is the sole responsibility of Proponents to ensure that each Submittal in respect of their Proposals is received on or before the relevant Closing Time and to obtain confirmation from Partnerships BC as to whether the applicable Submittal in respect of their Proposal was received on or before the Closing Time.

The Province or Partnerships BC may at any time, by notice to the Proponents (whether or not actually received by the Proponents), extend the Closing Time.

4.5 Evaluation Process

4.5.1 Overview

All Proposals will be evaluated in accordance with the methodology set out in Appendix 1B of the RFP. The Evaluation Process will consider the following:

- Stage 1: Satisfaction of Mandatory Submission Requirements;
- Stage 2: Satisfaction of Minimum Performance Requirements; and
- Stage 3: Scored Evaluation of Proposal.

4.5.2 Stage 1: Satisfaction of Mandatory Submission Requirements

This is a completeness check. Satisfaction of the Mandatory Submission Requirements, which are set out in Appendix 1F, will be determined on a pass/fail basis.

4.5.3 Stage 2: Satisfaction of Minimum Performance Requirements

The Minimum Performance Requirements are identified in Appendix 1F. The evaluation will consider whether the Proposal meets the Minimum Performance Requirements. Satisfaction of the Minimum Performance Requirements will be determined on a pass/fail basis.

4.5.4 Stage 3: Scored Evaluation of Proposal

Each Proposal that meets the Mandatory Submission Requirements and Minimum Performance Requirements will be evaluated according to the evaluation methodology set out in Appendix 1B using the categories set out in Table 4-1. The evaluation will consider the extent to which the Proposal exceeds the Minimum Performance Requirements. A score out of a maximum of 1,000 points will be assigned to the Proposal in accordance with the distribution indicated in Table 4-1.

TABLE 4-1
Point Distribution for Proposal Evaluation

Category	Available Points
Safety	350
Mobility	250
Construction Traffic Management	150
Handback Value	50
Environment	100
Commercial and Finance	100
TOTAL	**1,000**

A Proponent will be selected to become the Preferred Proponent if its Proposal score is higher than the score of the other Proposals evaluated and it executes and delivers the Preferred Proponent Agreement as set out in Section 4.2.3.

4.5.5 General Guidelines

The Province may consider:

- any additional information requested by the Province and provided by the Proponent
- advice from the Province's advisors
- the results of reference checking following receipt of Proposals
- responses to clarifications (if any) requested by the Province

4.5.6 Debriefing

Following Financial Close, a debriefing will be offered to unsuccessful Proponents.

4.6 Design-Build Failsafe Proposal

All Proponents are required to submit, as part of a Conforming Proposal, a separate and independent proposal to design and construct DB12 and DB13 (the Design-Build Failsafe Proposal) in accordance with the request for proposals included in Appendix 1C (the Design-Build Failsafe Request for Proposals). Under the terms of the Design-Build Failsafe Request for Proposals, Proponents are required to submit separate and independent technical and financial submissions. Upon receipt, the Province will arrange a separate evaluation which will verify compliance with the submission parameters set out in the request for proposals. In order for a Design-Build Failsafe Proposal to be considered a conforming Design-Build Failsafe Proposal, the technical submission must meet minimum requirements set out in Appendix 1C, and the financial submission price must not exceed the cost level indicated by the Province in Appendix 1C. A Design-Build Failsafe Proposal that is a conforming proposal according to the requirements of Appendix 1C is a prerequisite of a Conforming Proposal.

The Province reserves the right (but not the obligation) to use the failsafe process, at its discretion. The failsafe process is further detailed in Section 6.3.

4.7 Fairness Reviewer

The Honourable W.J. Wallace, QC, has been engaged as a fairness reviewer in association with Mr. Ted Hughes, OC, QC, (collectively, the Fairness Reviewer) with responsibility, as an independent observer, to review the development and implementation of the entire Consultation and Selection Process from a fairness perspective. This includes, but is not limited to, monitoring the evaluation of the Proposals and the selection of the Preferred Proponent. The Fairness Reviewer

will provide, on an ongoing basis, an objective opinion as to the fairness of the Consultation and Selection Process. In particular, the Fairness Reviewer will provide a written report in respect of the Proposal Evaluation Process which will be made public after selection of the Preferred Proponent.

5. General Information and Instructions

5.1 Background Technical Information

5.1.1 Overview

Numerous investigations, surveys, and studies that are of significance to the DBFO Project have been and continue to be undertaken by the Province. Reports and other material relating to these activities are in and continue to be added to the Data Room as they become available. Investigations still ongoing include geotechnical investigations (as described in Section 5.1.2) and various environmental studies (as described in Section 5.1.3).

5.1.2 Geotechnical Investigations Ongoing

The Province has retained EBA Engineering Consultants Ltd. (EBA) to provide additional geotechnical investigation services and to coordinate drilling activities and the activities of other companies that will perform geotechnical testing work during Summer 2004. The Province held Topic Meetings with Proponents regarding the geotechnical investigations in order to familiarize them with the EBA workplan and to offer them the opportunity to identify additional investigations or modifications to the workplan that may be beneficial. Subsequent to these Topic Meetings, Proponents submitted to the Province requests for additional geotechnical investigations. EBA has reviewed the requests and compiled a revised scope of work based on the requests.

Results of such investigations will be documented in reports which will be added to the Data Room.

5.1.3 Environmental Information

Further to receiving certification under the British Columbia Environmental Assessment Act and the screening level decision under the Canadian Environmental Assessment Act, the Province has commissioned the following studies and is pursuing the following permits, approvals, or legislative amendments.

5.1.3.1 Authorization for Work by Others in Section DB12

The Province is currently seeking an Authorization under subsection 35(2) of the Fisheries Act for work being done by others in Section DB12 (see Section 2.2.3.4) from the Habitat and Enhancement Branch of Fisheries and Oceans Canada (DFO). The work that is the subject of this Authorization includes:

- replacement of fish bearing culverts at Preliminary Alignment (PA) Sta. 229+124 and 232+240;
- construction of the fisheries compensation site at the old salt shed location (PA Sta. 229+180); and,

- diversion of approximately 50 m of the Cheakamus River tributary channel (PA Sta. 229+670) from the roadside into the original stream channel.

The Province is currently in discussions with DFO regarding in whose name the Authorization for work to be undertaken by DBFO Co will be issued. Two options under consideration are: (1) issuing the Authorizations in the name of DBFO Co; or (2) issuing the Authorizations with DBFO Co and the Province as joint signatories.

5.1.3.2 Fisheries Compensation Site Construction

The Province will construct a fisheries compensation site at the old salt shed location (PA Sta. 229+180). Construction of this fisheries compensation site, along with installation of culverts by others as part of the pregrading work described in Section 2.2.3.4, is expected to result in 2,127.8 m^2 of instream habitat credit and 2,325 m^2 of riparian habitat credit. These habitat credits are made available to DBFO Co to offset instream and riparian habitat impacts elsewhere on the DBFO Project. Construction of any other fisheries compensation is the responsibility of DBFO Co, as described in Volume 3.

The general standard and practices under which DFO will consider Fisheries Act subsection 35(2) Authorizations for work packages of the Sea-to-Sky Highway Improvement Project include the general standard and practices set out and described in the DFO advice letter dated August 23, 2004 to Angela Buckingham, Ministry of Transportation.

5.1.3.3 Notification for Culvert Installations in Section DB12

The Province has submitted a notification to the BC Ministry of Water, Land and Air Protection (WLAP) pursuant to Section 44 of the Water Act Regulation for culvert installations between Cheakamus Canyon and Daisy Lake Channel, for Cheakamus River armouring protection works, and for the Cheakamus River tributary channel diversion (PA Sta. 229+670).

5.1.3.4 Ocean Dumping Permit

The Province has applied to Environment Canada for an Ocean Dumping Permit in accordance with Part VI of the Canadian Environmental Protection Act. The term requested for the permit is September 15, 2004 to September 15, 2005. The permit application is in the Data Room and the permit itself will be placed in the Data Room when it is issued by Environment Canada. The Province is not intending to renew the permit after expiry and DBFO Co will be responsible for further permit applications.

5.1.3.5 Park Use Permit for Use of Porteau Cove Barge Loading Operations

The Province is obtaining a Park Use Permit from Environmental Stewardship Division, WLAP for the limited use of Porteau Cove for barge loading operations during the Project Term. The permit will govern operations and establish restrictions and monitoring requirements. DBFO Co operations will be physically limited to the area of land that is designated as a Recreation Area. An explanatory plan for Porteau Cove Provincial Park showing the working area has

been placed in the Data Room and the permit will be placed in the Data Room when it becomes available. Upon completion of construction, WLAP will prepare a legislative amendment package to return this Recreation Area back into Class A park status.

5.1.3.6 Legislative Park Boundary Amendment for Brandywine Falls Provincial Park

WLAP has obtained a legislative park boundary amendment for Brandywine Falls Provincial Park to allow the Province to acquire right-of-way for Highway construction. An explanatory plan for Brandywine Falls Provincial Park has been placed in the Data Room. Once construction is completed through the park, the surplus Highway right-of-way will be added to the park through a legislative amendment. The Province is responsible for all costs associated with the loss of the campground, any construction within the park boundary, and the reconstruction of the facility as a day-use area.

5.1.3.7 Legislative Park Boundary Amendment for Shannon Park

WLAP will obtain a legislative park boundary amendment for Shannon Park in Fall 2004 to allow the Province to acquire right-of-way for Highway construction. An explanatory plan for Shannon Falls Provincial Park has been placed in the Data Room. Once construction is completed through the park, a portion of the surplus Highway right-of-way will be added to the park through a legislative amendment as compensation for the loss of park land.

5.1.3.8 Chieftain Viewpoint Parking Lot (Stawamus Chief Provincial Park)

WLAP and the Province are continuing discussions on the ultimate ownership, management, and maintenance of the Chieftain viewpoint parking lot within Stawamus Chief Provincial Park. Should a legislative park boundary amendment be required for Stawamus Chief Provincial Park to allow the Province to acquire right-of-way for Highway construction, the Province will prepare the submission package for WLAP's consideration.

5.1.3.9 Plant Community Compensation

The Province is responsible for compensating for the loss of dry arbutus dominated habitat in the Horseshoe Bay area and for the loss of areas of red- and blue-listed plant communities throughout the corridor.

5.1.3.10 Water Quality Pre-construction Sampling

Water quality pre-construction sampling has been conducted in DB2 and in a portion of DB12 as part of the Province's responsibilities to conduct water quality audit and performance monitoring. Results of the sampling along with well data are in the Data Room.

5.1.3.11 Archaeological Impact Assessment

The Province commissioned the draft "Archaeological Impact Assessment report for the Sea-to-Sky Highway Improvement Project, Heritage Inspection Permit 2003-111, and Squamish Nation Permit 03-001", dated January 22, 2004. The report is in the Data Room.

5.2 Data Room

An electronic data room at a secure internet address (the Data Room) has been established. There are no plans to establish a separate physical data room.

The information in the Data Room will be supplemented or updated from time to time. Proponents are solely responsible for checking the Data Room frequently for updates to ensure that they are using only the current information. Without limiting Section 6.19, neither the Province nor any of its representatives is responsible or liable for any failure on the part of any Proponent to check the Data Room, or for any error or omission in any notice regarding the Data Room. Proponents are solely responsible for ensuring that they have software which allows them access to, and use of, any information in the Data Room.

All information in the Data Room is subject to the disclaimers and limitations of liability and responsibility set out in the RFP and in any documents in the Data Room, including the provisions of Sections 6.16 and 6.19.

In the event of conflict between anything downloaded from the Data Room by Proponents and the contents of the Data Room, the contents of the Data Room will govern and take precedence.

5.3 Contact Person and Questions and Answers Protocol

All questions, inquiries, comments, requests for information, requests for clarification, request for a Topic Meeting, and other communications, regarding the RFP, including the form of the DBFO Agreement, (each a Request for Information or RFI) must be in writing in accordance with the protocol set out in Schedule IV of the Bidding Agreement and directed to the following person (the Contact Person):

Sea-to-Sky Highway Improvement Project
DBFO Project
Request For Information

Sea-to-Sky Highway Improvement Project Office
#1300 – 1075 West Georgia Street
Vancouver, BC V6E 3C9
Canada

ATTN: Ms. Maria Ciarniello
Fax: 604.605.5995
E-mail: Maria.Ciarniello@partnershipsbc.ca

If the Province identifies a need for general clarification on an issue which does not require an Addendum, or if it identifies a matter of substance which the Province, in its discretion, considers should be formally brought to the attention of all Proponents, a letter of clarification will be issued to all Proponents.

5.4 Proponent Communications Protocol

Proponents will only communicate with the Province or Partnerships BC in connection with the DBFO Project through the Contact Person, in accordance with the questions and answers protocol set out in the Bidding Agreement, or where applicable, in accordance with the Proposal submission requirements set out in Section 4.3 and Appendix 1F. Without limiting anything in Section 6, in no event will Partnerships BC or the Province be responsible for any statements, representations, assurances, commitments, or agreements which Proponents believe they may have received or reached with any Stakeholders or other parties. Proponents rely on all such statements, representations, assurances, commitments or agreements at their own risk and without recourse to the Province or its Representatives and are solely responsible for ensuring that they are incorporated into binding written agreements between the Proponent and the Stakeholders or other parties.

All publicity in relation to the DBFO Project, including communications with the media and the public, by or from Proponents or their Proponent Team Members (or their respective directors, officers, employees, consultants, advisors, representatives and agents) must be coordinated with, and is subject to, the prior written approval of the Province, provided that such approval shall not be unreasonably withheld.

No media releases may be issued by any Proponent or Proponent Team Member in relation to the DBFO Project without first submitting same to the Province for review and prior written approval, not to be unreasonably withheld. Proponents and their Proponent Team Members shall promptly notify the Province of requests for interviews or other requests from the media. The subject and content of all responses to such media requests and to interviews shall be reviewed and coordinated in advance with the Province and approved by the Province in the same manner as media releases. Each Proponent shall use all reasonable efforts to ensure that its Proponent Team Members and others associated with the Proponent comply with these requirements.

5.5 Investigations, Surveys, and Studies by Proponents

Proponents are required to conduct their own due diligence in relation to all aspects of the DBFO Project. Proponents are responsible for carrying out any independent investigations, surveys, and studies which they consider necessary or appropriate in connection with satisfying their due diligence responsibilities, at their own cost. Proponents are required to coordinate any field work through the Province in accordance with Section 5.6, to ensure that inconvenience to land owners, tenants, road users, and other contractors is kept to a minimum. Proponents wishing to arrange a site visit for such purpose should submit their request to the Contact Person in accordance with the procedure outlined in Section 5.6.

5.6 Site Access

Proponents wishing to arrange a visit to the Site or Adjacent Areas for any purpose (other than for a meeting previously arranged by the Contact Person) or to access any non-public portions of the Site or Adjacent Areas should submit their request to the Contact Person by RFI in accordance with the Bidding Agreement setting out the proposed visit date(s), time(s), location(s), and the purpose for the visit(s). The RFI should be submitted at least 48 hours in advance of the time for any proposed site visit.

The Province may have a representative present during any and all visits to the Site or Adjacent Areas to monitor the Proponent's activities during the site visit, particularly if the purpose of the site visit includes any activities which may disturb the environment or cause damage to any property at or adjacent to the Site and Adjacent Areas. The Proponent should ensure that it carries appropriate insurance coverage, acceptable to the Province, acting reasonably.

6. General Matters

6.1 Selection Process Management and Advisors

Partnerships BC, a company wholly-owned by the Province, is managing the selection process for the DBFO Project on behalf of the Province. The Province and Partnerships BC have in turn retained advisors, identified in Section 6.15 to provide input and advice as required by the DBFO Project team. Under no circumstances are Proponents to contact any of the advisors listed in Section 6.15 or any member of the staff of Partnerships BC, the Ministry of Finance, the Ministry of Transportation, or the Ministry of the Attorney General in connection with the DBFO Project unless expressly permitted hereunder.

6.2 Stipend and Expenses

The Province will pay a $1.5 million stipend (the Stipend) to each Proponent that is not selected as the Preferred Proponent and that meets the conditions for payment described in the Bidding Agreement. The Bidding Agreement also sets out the Province's commitment to pay a Stipend under other circumstances.

Except in circumstances where they are entitled to receive the Stipend (and then only to the extent of the Stipend), Proponents are solely responsible for their own costs and expenses in preparing and submitting a Proposal and for participating in the Consultation and Selection Process and are not entitled to any other compensation from Partnerships BC or the Province.

6.3 Province's Right to Amend or Cancel RFP

The Province may in its discretion at any time and for whatever reason, and without liability to the Province or any other person, by Addendum, modify, amend or otherwise change any part or all of this RFP, including by extending any schedule or time periods (including the Closing Time and the schedule for implementation of the DBFO Project) specified within, or suspending, postponing or cancelling, all or any part of this RFP. Each such Addendum shall be issued by the Province in writing and shall be expressly identified as an Addendum to this RFP.

Although it is the current intention of the Province to select a Preferred Proponent and enter into a DBFO Agreement, if the Province does not receive a Proposal that satisfactorily meets all of the requirements set out in this RFP, without limiting the preceding paragraph, the Province may cancel this RFP and issue a new request for proposals for any or all parts of the DBFO Project if such requirements are not fully satisfied or otherwise in its discretion. In such case, the Province may proceed with any or all parts of the DBFO Project in such manner as the Province in its discretion considers appropriate including by using some or all of the Proponents' ideas and concepts and by proceeding through a

traditional design-bid-build, design-build or other procurement model rather than that contemplated by this RFP.

If there is a delay of more than 90 days in Financial Close, after the Province has provided notice to the Proponent that it has been selected as Preferred Proponent, the Province intends to reserve the right (but not the obligation) to use the failsafe process, in its discretion. The failsafe process involves a design-build contract for a section of the Highway between Cheakamus Canyon North to Function Junction (DB12 and DB13). If the Province intends to initiate the failsafe process, it will provide notice to Proponents that the RFP is cancelled, the Consultation and Selection Process is terminated and that the Province intends to proceed with the failsafe process. If the failsafe process is initiated by the Province, the contract may be awarded to the lowest priced conforming Design-Build Failsafe Proposal that satisfies both technical and financial criteria as defined in Appendix 1C. The Preferred Proponent may not be the successful Proponent under the failsafe process. The Province, in lieu of the failsafe process, further reserves the right, in its discretion, to grant an extension to continue negotiations with the Preferred Proponent for a reduced scope of the DBFO Project, to proceed to the next ranked Proponent who submitted a conforming Proposal, or to cancel the negotiations and proceed as it sees fit.

If the Province fails to select a Preferred Proponent within 90 days of the Closing Time or cancels the RFP at any time and then elects to proceed with all or any parts of the DBFO Project through an alternative procurement process, the Province will be entitled to contract directly with one or more Proponent Team Members or with any one or more of the contractors, sub-contractors, consultants, advisors and others engaged by or through any Proponent or any Proponent Team Members or with any other person or persons, for any or all matters related to all of any part of the DBFO Project.

Subject to the Province's right to modify, amend or otherwise change this RFP and to initiate the failsafe process as referred to above, if the Province receives a Conforming Proposal from at least one Proponent, the Consultation and Selection Process will, at the option of the Province, remain unchanged.

In addition to its rights set out above, if the Province does not receive at least one Conforming Proposal then the Province has the right, but not the obligation, in its discretion at any time and without liability to any Proponent or Proponent Team Member, except as may be expressly provided for in the Bidding Agreement, to:

a) negotiate with the Proponent who submitted the Proposal which in the opinion of the Province is most advantageous to the Province, and attempt to finalize a DBFO Agreement with that Proponent on terms, conditions and with scope acceptable to the Province; or

b) negotiate with any other person whom the Province considers appropriate, and that the Province in its discretion considers may be able to complete the DBFO Project for a price and on terms and conditions acceptable to the Province.

The Province reserves the right not to proceed with this RFP, the DBFO Agreement or the DBFO Project, or to proceed with the Design-Build Failsafe Proposal, at its discretion.

6.4 Province's Right to Reject any and all Proposals

The Province is not bound to accept the lowest priced, highest ranked or any Proposal and may in its discretion reject any Proposal that does not meet all of the requirements set out in this RFP or for which the necessary orders and approvals referred to in Section 4.2.5 are not issued. The Province's decision on whether or not a Proposal is acceptable will be final and the Province need not consult with the Proponent in making its determination.

The Province has no obligation to review or consider and may in its discretion reject any and all Priced Amendments submitted by the Preferred Proponent, for whatever reason or reasons the Province in its discretion deems appropriate and to be solely in the best interest of the Province, BCTFA, and Partnerships BC or any of them as determined by the Province, and notwithstanding any custom of the trade to the contrary nor anything contained elsewhere in the RFP. Without limiting but in addition to the foregoing, the Province may in its discretion refuse to consider, remove from the Consultation and Selection Process entirely, or reject outright any Proposal which in the opinion of the Province is materially incomplete or irregular, which contains exceptions or variations not acceptable to the Province, which contains a false or misleading statement, claim or information, which omits any material information required to be submitted under the RFP or for which background investigations reveal any false statements, criminal affiliations or activities by a Proponent or Proponent Team Member.

Neither the Province nor any of its Representatives shall under any circumstances, be responsible or liable to any person, including any Proponent for any costs incurred or damages suffered by any person or any Proponent in relation to the RFP (including in relation to the preparation, review or evaluation of a Proposal) or the Consultation and Selection Process, other than to pay, in accordance with and subject to the terms and conditions set out in the Bidding Agreement, the Stipend.

6.5 Conflicts in Documents

If there is any provision in any part of the RFP or the DBFO Agreement which a Proponent considers prior to submitting its Proposal to be in conflict with any other part of the RFP or the DBFO Agreement, the Proponent must notify the Contact Person in writing in accordance with Section 5.3, giving the details of such apparent conflict and seeking clarification. If any such conflict exists but notice is not given by a Proponent in accordance with the foregoing, the provision which, in the sole opinion of the Province, will provide the higher overall value to the Province, will govern and take precedence.

Subject to the foregoing, in the event of conflict or inconsistencies between or among the Bidding Agreement, any of the volumes of the RFP or any appendix to Volume 1, the documents govern in the following order of precedence, with the first listed taking precedence over those listed after:

- DBFO Agreement
- Bidding Agreement

- RFP, other than Volume 2 containing the form of DBFO Agreement

If there is a conflict between one of the above documents as issued to Proponents in paper form and the same document as issued to Proponents in digital, electronic or other computer readable form, the paper form will govern and take precedence. If there is a conflict between any of the above documents as issued to Proponents in paper form and the same document in the Data Room, the document as issued to Proponents in paper form will govern.

6.6 Conflicts of Interest/Relationship Review Process

Proponents must, in their Proposals, disclose potential and actual conflicts of interest and any existing relationships they or any of their Proponent Team Members or Key Individuals may have with any Restricted Party. The Relationship Review Guidelines can be found at **www.seatoskyimprovements.ca**.

If a Proponent, prior to or following submission of its Proposal, discovers any potential or actual conflict of interest or any existing relationship it or any Proponent Team Member or Key Individual may have with any Restricted Party the Proponent must promptly disclose the conflict or relationship to the Province in writing through the Contact Person.

At the time of disclosure of any potential or actual conflict of interest or existing relationship, the Proponent must provide the Province with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable such conflict. The Proponent must submit such additional information to the Province as the Province may require in connection with its consideration of the conflict.

The Province may in its discretion waive any and all potential or actual conflicts, or the impacts of any existing relationships, whether arising out of existing business relationships or otherwise. Any waiver may be upon such terms and conditions as the Province in its discretion may require to satisfy itself that the conflict has been appropriately managed, mitigated and minimized, including requiring the Proponent and affected persons or entities to put into place such policies, procedures, measures and other safeguards as may be required by and are acceptable to the Province, in its discretion, to mitigate the impact of such conflict and to ensure that any and all Confidential Information the Proponent or any Proponent Team Member or Key Individual may have continues to be kept confidential and not disclosed or used except as expressly allowed by the Province. Without limiting the generality of the foregoing, the Province may, in its discretion, require the Proponent or Proponent Team Member to substitute a new person or entity for the person or entity giving rise to the conflict or who has the existing relationship. Proponents are encouraged to bring all such potential or actual conflicts and existing relationships to the attention of the Province prior to the submission of Proposals so that the Province may be able to advise them as to whether a waiver will be granted and, if so, the terms and conditions (if any) that may be imposed by the Province as a condition of granting a waiver.

The Province has appointed Mr. Leslie R. Peterson, QC to act as a conflicts adjudicator in respect of the DBFO Project (the Conflicts Adjudicator) to make decisions on issues pertaining to conflict of interest or unfair advantage including whether any person or entity is a Restricted Party. By submitting a Proposal,

each Proponent agrees to be bound by all decisions of the Conflicts Adjudicator and agrees that the decisions of the Conflicts Adjudicator on any conflict of interest or unfair advantage issue, whether on a request for rulings under Section 6.15 or on request by the Province at any stage of the Consultation and Selection Process, is final and binding on the person requesting the ruling, on all Proponents, on their Proponent Team Members, and on the Province.

6.7 Confidentiality

In connection with the Submission made by each Proponent pursuant to the RFQ, the Province required Proponents to execute a confidentiality agreement, which agreement extends to the RFP and the Consultation and Selection Process. Further confidentiality requirements are contained in the Bidding Agreement.

The Province will (subject to the requirements of applicable freedom of information legislation) use reasonable efforts to maintain the confidentiality of Proposals but only so far as the consultation, evaluation, scoring and approval processes will allow, having regard to the involvement of third parties, including the Stakeholders, in such processes.

6.8 No Collusion

Proponents, Proponent Team Members and Key Individuals must not discuss or communicate, directly or indirectly, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent (including any Proponent Team Member or Key Individual of such other Proponent) regarding the preparation, content or representation of their Proposals. Proposals must be submitted without any connection (including a connection arising solely through shareholdings or other equity interests in or of a Proponent or Proponent Team Member), knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent or representative of any other Proponent (including any Proponent Team Member or Key Individual of such other Proponent).

6.9 No Lobbying

Proponents and Proponent Team Members and their respective directors, officers, employees, consultants, agents, advisors and representatives must not in relation to the DBFO Project, the RFP, or the Consultation and Selection Process, engage in any form of political or other lobbying whatsoever to influence the outcome of the Consultation and Selection Process or the selection of the Preferred Proponent. Further, no such person (other than as expressly directed or permitted by this RFP or the Bidding Agreement) must attempt to communicate in relation to the DBFO Project or the RFP, directly or indirectly, with any Province, any Minister or Deputy Minister of the Province, any member of the Province, any member of the Executive Council, any Members of Legislative Assembly, any Restricted Parties, or any director, officer, employee, agent, advisor, consultant or representative of any of the foregoing, before or after the Closing Time, for any purpose whatsoever, including:

- commenting on or attempting to influence views on the merits of the Proponent's Proposals in relation to Proposals of other Proponents;
- influencing, or attempting to influence, through outside pressure, the scoring and ranking by the Province of Proposals, the selection of the Preferred Proponent, or any negotiations between the Province or Partnerships BC and the Preferred Proponent;
- promoting the Proponent or its interests in the DBFO Project in preference to that of other Proponents;
- criticizing aspects of the RFP or DBFO Agreement in a manner which may give the Proponent a competitive or other advantage over other Proponents; and,
- criticizing the Proposals of other Proponents.

In the event the Province determines, in its discretion, that there has occurred any lobbying or communication by a Proponent in contravention of the foregoing the Province in its discretion may at any time, but will not be required to, reject any and all Proposals submitted by that Proponent without further consideration and, in the Province's discretion, either terminate that Proponent's right to continue participating in the Consultation and Selection Process, or impose such conditions on that Proponent's continued participation in the Consultation and Selection Process as the Province in its discretion may consider in the public interest or otherwise appropriate.

6.10 Disclosure

The following have been publicly disclosed by posting them at **www.seatoskyimprovements.ca**:

- Registration of Interest
- Request for Qualifications
- Number of parties who provided a Submission in response to the RFQ
- Name and number of Short-Listed Respondents
- Fairness Reviewer's report on the RFQ process

Additional documents that will be publicly disclosed by posting them at **www.seatoskyimprovements.ca** include:

- Request for Proposals (as issued in final form)
- Name of Preferred Proponent
- Fairness Reviewer's report on the Proposal Evaluation Process
- Value for money assessment to be published shortly after Financial Close
- The form of DBFO Agreement

Pursuant to the *Freedom of Information and Protection and Privacy Act*, the form of DBFO Agreement to be disclosed publicly following Financial Close will exclude certain information as contemplated in the legislation.

6.11 Freedom of Information and Protection of Privacy Act

All documents and other records in the custody of or under the control of either or both of Partnerships BC and the Province are subject to the *Freedom of Information and Protection of Privacy Act*.

Subject to the requirements of the *Freedom of Information and Protection of Privacy Act*, the terms of the Bidding Agreement and the Province's disclosure policy described in Section 6.10 all Proposals and other documents and records submitted by a Proponent in connection with the RFP will be considered confidential.

6.12 Transportation Investment Act

The *Transportation Investment Act* (S.B.C. 2002, c.65) authorizes the Minister to enter into concession agreements with third parties to design, build, operate and maintain highways. Proponents should ensure they familiarize themselves with the *Transportation Investment Act* and other relevant legislation.

6.13 Insurance and Workers Compensation

The Province is providing no insurance or workers compensation coverage for any matters whatsoever to any Proponent, Proponent Team Member or any of their respective directors, officers, employees, consultants, advisors, agents, contractors or subcontractors.

If a Proponent proposes to perform any investigations at the Site or Adjacent Areas, the Province, as a condition of allowing access to the Site or Adjacent Areas or to the facilities or premises of Partnerships BC, BCTFA or the Province, reserves the right to require Proponents to provide evidence acceptable to the Province that insurance, acceptable to the Province, is in place.

As a condition of allowing access to the Site or Adjacent Areas or to the facilities or premises of Partnerships BC, BCTFA or the Province, each of them reserves the right to require each Proponent to provide evidence acceptable to them that each Proponent and its Proponent Team Members are registered with the Workers' Compensation Board of British Columbia, where such registration is required by Laws and Regulations in British Columbia or, if not required to be registered, then to provide evidence acceptable to them that each Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to Partnerships BC and the Province.

6.14 Changes to Proponents and Proponent Team Members

If, prior to the Closing Time, a Proponent wishes to change any of its Proponent Team Members, including Prime Members or Equity Members, and/or Key Individuals or its proposed contractors, consultants, advisors or others named in the Submission made pursuant to the RFQ or the Proposal submitted pursuant to this RFP, the Proponent must immediately notify the Contact Person in writing. Such notification must clearly indicate the proposed substitution, the reason for

the change, and include reasonable documentation to demonstrate that the proposed substitute has appropriate qualifications, experience and ability when compared as a whole to the original named entity or person and is otherwise suitable for the particular position. The Proponent must also provide such further documentation and information as may be requested by the Province in its discretion so as to satisfy itself as to the suitability, qualifications, experience and ability of the proposed substitute.

The Province will consent to such substitution if the proposed substitute entity or person is, in its discretion, acceptable to the Province provided that such consent will not be unreasonably withheld. Any such consent will be in writing and may be subject to such terms and conditions as the Province may require.

If the proposed substitute is not acceptable to the Province, the Proponent must propose an alternative substitute for consideration by the Province, which substitute is capable of meeting the suitability, qualifications, experience and ability of the original entity or person and is available to work with the Proponent and must satisfy the same documentation and information requirements as set out above for the initially proposed substitute. If the Proponent is unable to provide the Province with an acceptable substitute, such Proponent's Proposal may, at the option and in the discretion of the Province, be disqualified from consideration.

If, after submission of a Proposal and prior to the execution of the DBFO Agreement, there is a proposed addition, deletion or substitution or other change in the Proponent Team Members or effective control of the Proponent or there is a material change in circumstances which may adversely affect a Proponent's ability to perform its obligations under the DBFO Agreement, then the Proponent must immediately notify the Province in writing to the Contact Person. Such a change will not automatically disqualify a Proponent. The Province's decision as to whether or not to disqualify a Proponent as a result of such a change will be final and binding.

The Province may in its discretion allow a proposed or actual change on such terms and conditions (if any) as it may require. In the case of an actual change previously which has occurred without the consent of the Province, the Province may disqualify the Proponent and may terminate its continued involvement in the Consultation and Selection Process, or allow the Proponent to continue under such terms and conditions as the Province in its discretion may require. If an addition, deletion, substitution or other change is allowed by the Province, the Province may require additional information to form part of the Proposal and to be taken into account in the Evaluation Process.

6.15 Restricted Parties

The firms listed in this section and their affiliates have been identified as Restricted Parties and, accordingly, neither they nor any of their respective directors, officers, partners or employees are eligible to participate as a Proponent or as a Proponent Team Member. Additional firms or individuals may be added to this list of Restricted Parties at any stage of the Consultation and Selection Process of the DBFO Project.

DBFO Project Advisors

- A.H.B. 2000 Inc.
- CH2M HILL Canada Limited
- Collings Johnston Inc.
- Ernst & Young
- Fraser Milner Casgrain LLP
- Geoplan Opus Consultants Incorporated
- Interwest Property Services Ltd.
- James Hoggan & Associates Inc.
- Kirk & Co. Consulting Ltd.
- KPMG LLP
- Nossaman Guthner Knox Elliott LLP
- Par Terre Environmental Consulting Services Ltd.
- R D Ciceri Consulting
- Seismic 2000 Construction LTD.
- SNC-Lavalin Group Inc.
- The Province, Partnerships BC, BCTFA, and any of their respective directors, officers, representatives (including members of the Executive Council), managers, employees, consultants, advisors or agents, the Fairness Reviewer, the Conflicts Adjudicator and other individuals who have had involvement in the Sea-to-Sky Highway Improvement Project and/or the DBFO Project.
- Certain current or former subcontractors, agents, representatives and advisors of Restricted Parties

Restricted Parties and their affiliates are not eligible to advise any Proponent or Proponent Team Member, directly or indirectly, or participate in any way as an employee, advisor, consultant, Prime Member, Equity Member, Key Individual or otherwise in connection with any Proponent in relation to the DBFO Project. Proponents are responsible for ensuring that they and their Proponent Team Members do not use, consult or seek advice from any Restricted Parties. A Proponent, Proponent Team Member, prospective Proponent Team Member or an advisor who has any concerns regarding whether a party is or may be a Restricted Party for the purposes of the Consultation and Selection Process should seek a ruling from the Conflicts Adjudicator.

In order to request a ruling as to whether a party is a Restricted Party, a Proponent, Proponent Team Member, prospective Proponent Team Member or advisor should submit to the Contact Person, not less than 10 days prior to the

Closing Time for Submittal A in accordance with Section 4.4, the following information:

a) the names and contact information of the Proponent and Proponent Team Members and the person or firm in respect of which the ruling is requested;

b) a description of the relationship that raises the possibility or perception of a conflict of interest or unfair advantage;

c) a description of the steps taken to date and future steps proposed to be taken to mitigate the possibility or perception of a conflict of interest or unfair advantage; and

d) copies of any relevant documentation.

Each Proponent, Proponent Team Member, prospective Proponent Team Member and their respective advisors agrees that, by submitting a request for a ruling, the ruling provided by the Conflicts Adjudicator will be final and binding on the person submitting the request, the Proponent, all its Proponent Team Members, all other Proponents and their Proponent Team Members, the Province and Partnerships BC. Neither the Province nor the Conflicts Adjudicator guarantees the timely provision of a ruling.

Subject to Section 6.7, all requests for rulings will be treated in confidence. If a Proponent, a Proponent Team Member, a prospective Proponent Team Member or advisor becomes a Restricted Party, it may be listed in an Addendum, posted on the project website or otherwise communicated to Proponents as a Restricted Party.

The Province may also independently ask for rulings where it identifies persons who may be Restricted Parties. The Province will give notice to the possible Restricted Party so that it can make its own submission to the Conflicts Adjudicator.

The Province may in its discretion and in consultation with the Conflicts Adjudicator waive the foregoing ineligibility for any one or more of the above listed entities or persons on such terms and conditions as the Province in its discretion may require, including requiring that the Proponent or entity put in place adopt adequate safeguards to mitigate the impact of such conflict and to ensure that any and all Confidential Information it may have continues to be kept confidential and not disclosed or used except as expressly allowed by the Province.

6.16 No Reliance

Except for any relief available to DBFO Co under the DBFO Agreement in respect of factual errors in any geotechnical information provided by the Province as Background Information, on which DBFO Co has reasonably relied (in accordance with good industry practice), neither the Province nor any of its Representatives represents or warrants, nor will DBFO Co be entitled to any compensation or other relief in relation to, the accuracy or completeness of any information set out in, referenced or otherwise provided in or through the RFP, its appendices or the Background Information, or of any other information (including

any background or reference information) or documents which may be made available by, through or on behalf of the Province or any of its Representatives.

Proponents must make such independent assessments as they consider necessary or desirable to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents on any and all of such information shall be at the Proponent's sole risk and without recourse against the Province or any of its Representatives.

Without limiting the generality of the foregoing, unless otherwise expressly provided in this RFP:

- Any and all use of or reliance upon any such information (including the Background Information or anything in the Background Information) by Proponents shall be and is subject to all express disclaimers of liability in the RFP, as well as all disclaimers of liability in the DBFO Agreement.
- Neither the Province nor any of its Representatives represent or warrant nor is responsible in any way for the scope, timeliness, completeness, appropriateness, or accuracy of any information, representations, statements, assumptions, opinions, interpretations in any such information (including the Background Information), including in relation to any one or more of: descriptions of site, geological or subsurface conditions; dewatering; opinions or interpretations based on existing or assumed information; previous studies or optimization; conceptual designs or layouts, statements or estimates of quantities of any part of the work; assumptions or descriptions as to construction means or methods; availability and quality of construction materials; soil disposal; requirements of the Stakeholders or others, or any assumptions or interpretations made by Proponents based on any information contained in the Background Information, any interpretations, conclusions, opinions or assumptions reached or made by Proponents based on anything in the Background Information.
- Where investigations and information relating to site conditions, including subsurface conditions, have been produced or made available to Proponents, such investigations and information are of a preliminary nature only and are not to be relied upon by Proponents except at their sole risk. Proponents are cautioned that any bore hole logs or test pit logs provided with any geotechnical information record only the observations which were made at the specific locations described and at the specific times recorded, and may not be representative of conditions encountered either at locations immediately adjacent thereto or, with respect to groundwater and other conditions, at any other times. Data shown for bore hole logs and test pit logs may not necessarily be representative of anticipated conditions. Proponents should perform such additional geotechnical and other investigations as they consider necessary and must obtain and rely on their own geotechnical consultants for all interpretation and opinions, including based on any bore hole logs and test pit logs made available through Partnerships BC, the Province and others.

By submitting a Proposal, each Proponent acknowledges, represents and warrants that its Proposal is based on and relies solely upon the Proponent's own examination, knowledge, information, judgment and investigations and not

upon any statement, representation or information made, furnished or given by or on behalf of the Province or any of its Representatives except where expressly made in the DBFO Agreement and warranted in the DBFO Agreement to be accurate by the Province for purposes of reliance by the Proponent.

No communications or responses from the Province in relation to the RFP, DBFO Agreement, Technical Requirements, the Consultation and Selection Process or the DBFO Project may be relied upon by Proponents, Proponent Team Members or any other Person unless, and only to the extent, confirmed in writing by an Addendum to the RFP or by a formal written response issued by the Contact Person to an RFI in accordance with Section 5.4. Any reliance by a Proponent, Proponent Team Member or any other Person on any communication or response obtained by a Proponent which is not contained in an Addendum to the RFP or in a formal written response to an RFI by the Contact Person issued in accordance with Section 5.4 shall be at the Proponent's sole risk and without recourse against the Province or any of its Representatives.

6.17 No Contract

By participating in the Consultation and Selection Process as outlined in this RFP, each Proponent expressly agrees that no contract of any kind whatsoever is formed under or arises from this RFP save and except only the Bidding Agreement and to the extent expressly agreed upon in the Proposal Form included in Appendix 1E.

6.18 Proponent Team Members and Subcontractors

Proponents shall ensure that all their Proponent Team Members, subcontractors, suppliers, manufacturers, advisors, consultants and subconsultants, and everyone associated with or related to the foregoing, are subject to and comply with the provisions of this RFP.

6.19 No Liability

As set out in the Bidding Agreement, the Province, its Representatives, and their respective successors and permitted assigns (collectively, the Releasees) will not under any circumstances, including pursuant to contract, tort, statutory duty, law, equity or otherwise, or any actual or implied duty of fairness, be responsible or liable for any Claims (except in respect of wilful misconduct by the Province) by any Person (including any Proponent, Proponent Team Member and/or any of their respective contractors, subcontractors, directors, officers, consultants, advisors or agents), arising out of or in any way related to the Consultation and Selection Process; (including any Claims arising our of or in any way connected with the Workshops, the Topic Meetings, or the Province's participation therein).

By executing a Bidding Agreement, the Proponent waived any Claims which it now has or may hereafter have against any Releasee and released each of the Releasees from any and all Claims arising out of or in any way relating to the Consultation and Selection Process.

As set out in the Bidding Agreement, the Proponent has agreed to indemnify and hold harmless each of the Releasees from and against any and all Claims brought by or on behalf of (i) any present or former Proponent Team Member against the Province or any other Releasee or Releasees arising out of or related to the Consultation and Selection Process, or (ii) any third party as a result of any act or omission of the Proponent or any Proponent Team Member in connection with the performance of its obligations in connection with the Consultation and Selection Process. Without limiting the generality of the foregoing, it is expressly understood and agreed that the Province will not be under any obligation whatsoever to select a Preferred Proponent or to award the DBFO Agreement to any Proponent at all or may cancel the RFP and/or the Consultation and Selection Process at any time for whatever reason(s) the Province in its discretion considers to be in the best interests of Partnerships BC and the Province.

6.20 Dispute Resolution

Any disputes arising in connection with this RFP or the Consultation and Selection Process (but not the Bidding Agreement) and not resolved through negotiations between Partnerships BC, the Province and the Proponent or Proponent Team Member, as applicable, within 30 days of the date of the written notice of the dispute to the Contact Person may by mutual agreement, be referred to and finally resolved by binding arbitration in accordance with the *Commercial Arbitration Act* (British Columbia). The Consultation and Selection Process will continue notwithstanding any such ongoing dispute resolution.

6.21 Proposal Evaluation

Except where otherwise expressly provided by the RFP, the Province has the authority to establish its own methods and procedures for the review, evaluation and scoring of Proposals and to make a recommendation in respect of the Preferred Proponent. The Province may independently consider or verify any information whether or not contained in any Proposal including conducting credit, reference, criminal record, litigation, bankruptcy, tax payer information and other checks and obtaining references from parties other than those listed by Proponents in their Proposals. If experience, capacity or other information contained in a Proposal is not verified to the Province's satisfaction through such checks, the Province is not obliged to, consider such cited experience, capacity or other information.

The Province may in its discretion request clarification of Proposals or request further information from any or all Proponents. If, in the sole opinion of the Province, any Proposal contains a defect or irregularity or fails in some way to comply with any requirement of this RFP that, in the sole opinion of the Province, can be remedied without providing an unfair advantage to one or more Proponents, the Contact Person may request clarification from the Proponent. The Province, upon receipt of appropriate clarification, may waive the defect or irregularity and accept the Proposal. Failure by a Proponent to provide a written response that, in the opinion of the Province, properly clarifies its Proposal within

the time specified in the request for clarification may result in disqualification of the Proposal.

The Province may be assisted by and may consult with various technical, financial and legal advisors and consultants in relation to any or all aspects of a Proposal. The appointment of and consultation by the Province with any one or more of these advisors or consultants will be in the discretion of the Province which may utilize any such advisors and consultants in any way that the Province in its discretion considers will be of assistance to it.

Glossary of Terms

"**Addendum**" means a written addendum to the RFP (including the DBFO Agreement), including the Technical Requirements, which is expressly identified as an addendum and issued by the Province to Proponents prior to the Closing Time for the submission of Proposals.

"**Adjacent Areas**" has the meaning given to it in the DBFO Agreement.

"**Adjacent Side Roads**" has the meaning given to it in Volume 4.

"**Age**" is the time, in years, between date of establishment and the current date.

"**Annual Affordability Ceiling**" means the maximum Total Performance Payment in any given year of the DBFO Agreement and as defined in Section 3.1 of Volume 1 and in Section 1.1 of Appendix 1D.

"**Architect**" means a person having a Certificate of Practice with the Architectural Institute of British Columbia.

"**Asset Condition Survey**" means data collected from road condition surveys, typically in electronic format, including such things as roughness, texture, defects, etc.

"**Asset Preservation Performance Measures**" has the meaning given to it in Section 3.2.1 of Volume 4.

"**Assets**" means all assets and rights to enable the Province or a successor contractor or concessionaire to design, construct, complete, own, operate, maintain and rehabilitate the Highway in accordance with this Agreement, including:

(a) physical assets of the Highway infrastructure, including highway running surfaces, bridges, retaining walls, culverts, tunnels, snow sheds, sign structures, drainage debris control structures and traffic signal and electrical systems;

(b) any land or buildings;

(c) any equipment and machinery;

(d) any Design Data;

(e) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);

(f) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);

(g) any revenues and any other contractual rights; and

(h) any intellectual property rights;

but excluding any assets and rights owned by the Province or BCTFA.

"**Authorization**" means authorization for works or undertakings resulting in the harmful alteration, disruption, or destruction of fish habitat in accordance with subsection 35(2) of the Fisheries Act.

"**Authorized Representative**" has the meaning given to it in Appendix 1F of Volume 1.

"**Availability Payment**" has the meaning given to it in Section 3.2.2 of Volume 1, and as more particularly defined in Section 2 of Appendix 1D.

"**Background Information**" means any and all drawings, reports, studies, data, documents or other information which are given or made available to Proponents by, through or on behalf of the Province or its Representatives, including those in the Data Room, or which are obtained by Proponents from or through any other sources such as the Sea-to-Sky Highway Improvement Project website, prior to the Closing Time and related in any way to the RFP, a Proposal or to the DBFO Project, but does not include the RFP, the DBFO Agreement, and the Technical Requirements.

"**Base Date**" means December 31, 2004.

"**BC Hydro**" means the Crown corporation known as BC Hydro & Power Authority and the British Columbia Transmission Corporation.

"**BC Parks**" means the division of the Ministry of Lands, Water and Air Protection which administers provincial parks in British Columbia.

"**BC Rail**" means British Columbia Railway Company.

"**BC Rail Partnership**" means the entity with whom the Province will enter into a rail access agreement.

"**BC Transportation Financing Authority**" means the BC Transportation Financing Authority established under the Build BC Act, R.S.B.C. 1996, c. 40.

"**Bidding Agreement**" means the agreement between the Province, a Proponent, and its Members (as defined therein) pursuant to which the Proponent participates in the Consultation and Selection Process, receives the RFP, and agrees to provide its Proposal.

"**British Columbia Environmental Assessment Act**" means SBC 2002, Chapter 43 of the Statutes and Regulations of British Columbia.

"**Business Development Opportunities**" has the meaning given to it in Section 2.8.3 of Volume 1.

"**Business Development Target**" has the meaning given to it in Section 2.8.3 of Volume 1.

"**Business Opportunities**" has the meaning given to it in the DBFO Agreement.

"**Canadian Environmental Protection Act**" means the 1999 Federal Act respecting pollution prevention and the protection of the environment and human health in order to contribute to sustainable development.

"**Claims**" has the meaning given to it in the DBFO Agreement.

"**Closing Location**" has the meaning given to it in Section 4.4 of Volume 1.

"**Closing Time**" has the meaning given to it in Section 4.4 of Volume 1.

"**Closure**" means a scheduled closure of the Highway as defined in Section 3.2.1.1 of Volume 3.

"**Confidential Information**" means all information which the Proponent directly or indirectly receives or acquires from or through any one or more of the Province or its Representatives whether before or after the issuance of this RFP, either in writing, or other visual or electronic form orally or through observation at the Site, Adjacent Areas or at any facilities of Partnerships BC, BCTFA or the Province relating to the financing, designing, development, equipment procurement, construction, commissioning, O&M Services or any other aspect of the DBFO

Project, including, without limitation, information in the Data Room; trade secrets; designs and design concepts; design data; calculations; operating and maintenance parameters; procedures and manuals; specifications; drawings, plans and sketches; reports; surveys; source codes; object codes; together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form containing or based on any such information and any other information which by written notice from the Province or its Representatives at the time of disclosure to the Proponent is required to be kept confidential by the Proponent. Confidential Information also includes all information prepared by the Proponent and submitted in its Proposal.

"**Conflicts Adjudicator**" has the meaning given to it in Section 6.6 of Volume 1.

"**Conforming Proposal**" has the meaning given to it in the Bidding Agreement.

"**Construction Quality Management Plan**" has the meaning given to it in Section 3.1 of Volume 5.

"**Construction Schedule**" as used in Volume 3 means the DBFO Co schedule for completing the improvements to the Highway.

"**Construction Traffic Management**" has the meaning given to Traffic Management in Section 3.2.1 of Volume 3.

"**Consultation and Selection Process**" has the meaning given to it in the Bidding Agreement.

"**Contact Person**" has the meaning given to it in Section 5.3 of Volume 1, or is such other person appointed from time to time by the Province.

"**Continual Improvement**" means the recurring activity to increase the ability to fulfill requirements.

"**Corrective Action**" means the action to eliminate the cause of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

"**Daily Cumulative Distribution of Traffic Flow**" means over a given 24-hour period, the cumulative number of vehicles passing through a PM-Section within a 15-minute period in relation to the total number of vehicles to pass through the PM-Section over a 24-hour period.

"**Data Room**" has the meaning given to it in Section 5.2 of Volume 1.

"**DB Sections**" are the geographic segments of the Highway identified for purposes of defining the scope of work and design criteria for the DBFO Project. The DB Sections are described in Section 1.4 of Volume 1 and in Section 2.2.1 of Volume 3.

"**DBFO Agreement**" means the Concession Agreement attached as Volume 2 of this RFP which is, (i) prior to the Province awarding a contract for the DBFO Project to the Preferred Proponent and execution of that contract, the most recently issued draft form of DBFO Agreement (including, when applicable, the Revised DBFO Agreement), once issued, or the Definitive DBFO Agreement, once issued, and (ii) after the execution of a contract by the Province and the Preferred Proponent for the DBFO Project, the Concession Agreement as executed.

"**DBFO Agreement Finalization Period**" has the meaning given to it in Section 4.2.3.

"**DBFO Co**" means the Concessionaire as defined in the DBFO Agreement.

"**DBFO Project**" means the design-build-finance-operate project for the Highway to be provided by DBFO Co pursuant to the DBFO Agreement.

"**Definitive DBFO Agreement**" has the meaning given to it in Section 4.2.2 of Volume 1.

"**Design and Construction Requirements**" means the design criteria, scope of work, and specifications set out in Volume 3, including any other commitments of scope etc. from DBFO Co's Proposal.

"**Design-Build Failsafe Proposal**" means an alternative proposal to DBFO that would be used at the sole discretion of the Province in the event that negotiations with the Preferred Proponent were not completed in a timely manner.

"**Disposition**" means the action to be taken to deal with an existing nonconformity.

"**Draft DBFO Agreement**" means the first form of DBFO Agreement issued during the Consultation and Selection Process.

"**Draft RFP**" means the initial draft form of the Request for Proposals issued during the Consultation and Selection Process.

"**Effective Date**" means the date upon which the DBFO Agreement becomes effective.

"**End of Term Payment**" has the meaning given to it in Section 3.2.5 of Volume 1 and as described in Section 7.0 of Appendix 1D.

"**Engineer**" means a person registered as a Professional Engineer with the Association of Professional Engineers and Geoscientists of British Columbia.

"**Environmental Agencies**" means any federal, provincial, or other regulatory agency having jurisdiction within the context used.

"**EA Certificate**" means the Environmental Assessment Certificate, T04-01, issued to the Sea-to-Sky Highway Improvement Project under the British Columbia Environmental Assessment Act.

"**Environmental Management Plan**" has the meaning given to it in Section 3.3.2 of Volume 3.

"**Environmental Quality Management Plan**" has the meaning given to it in Section 3.3 of Volume 5.

"**Equity Members**" means the individuals, corporations, joint venturers, partnerships or other legal entities that have an ownership or equity interest in a Proponent.

"**Evaluation Process**" means the process for evaluating the Proposals received from Proponents in response to the RFP, in general as outlined in Section 4.5 of Volume 1 and in detail in Appendix 1B.

"**Event Report**" means the formal report prepared immediately following a natural event.

"**Exception Events**" has the meaning given to it in Section 4 of Appendix 1D.

"**External Audits**" has the meaning given to it in Section 1.4 of Volume 5.

"**Fairness Reviewer**" has the meaning given to it in Section 4.7 of Volume 1.

"**Field Auditor**" means a person with the competence to conduct unscheduled external audits on a random basis or on specific areas of interest.

"**Final Completion**" means "Completion" as defined in the DBFO Agreement.

"**Final Completion Certificate**" means "Completion Certificate" as defined in the DBFO Agreement.

"**Financial Close**" means the date at which the financing arrangements contemplated by the DBFO Agreement are completed and all conditions precedent to the drawdown of funds under such arrangements are satisfied and such funds are available to be drawndown.

"**Financial Model**" means the computer spreadsheet model for the DBFO Project incorporating statements of DBFO Co's cash flows including all expenditures, revenues, financing and taxation of the operations together with the profit and loss accounts and balance sheets throughout the Project Term, accompanied by details of assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.

"**First Nations**" means the Squamish Nation, the Lil'wat Nation, the Tsleil-Waututh Nation, and the Musqueam Band.

"Fisheries Act", R.S., c. F-14, s. 1. of the Consolidated Statutes of Canada.

"**Fisheries Mitigation/Compensation Plan**" has the meaning given to it in Section 3.3.2 of Volume 3.

"**Forward Works Program**" means the proposed rehabilitation work schedule showing the scope and timing of physical work.

"**Funder**" means all or any of the persons who provide financing or funding in respect of the operations under the Funding Agreements including and, where the context so permits, prospective financiers or funders.

"**Funding Agreements**" have the meaning given to it in the DBFO Agreement.

"**Handback**" means the process of ending DBFO Co's licenced services for operation, maintenance and rehabilitation of the Highway and returning control to MOT. Handback will occur at the end of the Project Term, or at an earlier date associated with termination of the DBFO Agreement.

"**Handback Requirements**" means the condition of the Highway Assets at Handback as specified in Appendix 4F, Section 4.

"**Highway**" means the Highway 99 between Horseshoe Bay and Function Junction within the north and south project limits defined in Volume 4 and as more particularly defined as the "Concession Highway" in the DBFO Agreement.

"**Highway Design**" means the engineering designs, reports and drawings that define the project that is contained in a Proponent's Proposal.

"**Impacted Area**" means the geographic area that is disturbed by the construction and operation of the Highway.

"**Initial Proposed Amendments**" has the meaning given to it in Section 4.2.1 of Volume 1.

"**Internal Audit**" means a party audits conducted by, or on behalf of, the organization.

"**Key Individuals**" means the specific person(s) exclusive to a Proponent who were are identified as such in such Proponent's submittal and will be in their response to the RFP.

"**Key Performance Measures**" has the meaning given to it in Section 3.1.1.

"**Landscape Architect**" means a person who is a member in good standing of the British Columbia Society of Landscape Architects and entitled to use the designation "Landscape Architect".

"**Laws and Regulations**" has the meaning given to it in the DBFO Agreement.

"**Lead Auditor**" means a person with the competence to conduct scheduled audits at specific periods to assess the performance of DBFO Co's QMS.

"**Lil'wat Nation**" means the Lil'wat Nation, the Mount Currie Indian Band and its members, all of which are intended to refer to the same group of traditional peoples.

"**Long Vehicles**" means any vehicle classified as Class 4 or above in the GR02-FHWA13 Vehicle Classification Table.

"**Mainroad**" has the meaning given to it in Section 2.3.3 of Volume 1.

"**Mainroad Contract**" has the meaning given to it in Section 2.3.3 of Volume 1.

"**Mandatory Submission Requirements**" has the meaning given to in it Appendix 1F of Volume 1.

"**Maximum Availability Payment**" means the annual maximum payment from the Province attributable to the availability of the Highway as bid by DBFO Co and defined in Section 2.1 of Appendix 1D.

"**Minimum Performance Requirements**" has the meaning given to it in Appendix 1F of Volume 1.

"**Minister**" has the meaning given to that term in the DBFO Agreement.

"**Ministry**" means the BC Ministry of Transportation (MOT).

"**Ministry Representative**" means the individual designated by the MOT for a specific purpose.

"**Monthly Maximum Availability Payment**" has the meaning given to it in Section 2.1 of Appendix 1D.

"**Municipalities**" means those municipalities through which the Highway runs or which are otherwise directly impacted by the Highway.

"**Musqueam Nation**" means the Musqueam band and its members, all of which are intended to refer to the same group of traditional peoples.

"**Network Status Videos**" means a series of high resolution videos showing the road and shoulders, which provide a record of visual condition of the Highway.

"**New Construction Work Schedule**" means the schedule of works submitted by a Proponent as part of its Proposal as defined in Section 2.2.1 of Appendix 1F, Submission Requirements.

"**New Works**" means the capital improvements to the nine Highway sections identified in Table 1.1 and Figure 1.1 in Volume 1 as well as any additional capital improvements that are committed in DBFO Co's Proposal.

"**Non Conformance Event Point Rate**" has the meaning given to it in Section 4 of Appendix 1D.

"**Non-Availability Deduction**" has the meaning given to it in Section 3 of Appendix 1D.

"**Non Conforming Event**" has the meaning given to it in Section 4 of Appendix 1D.

"**Nonconformity**" means the non-fulfilment of a requirement. It is a deficiency in characteristic, documentation or procedure which renders the quality of a product unacceptable or indeterminate.

"**Nonconformity Report**" means a document detailing the description, proposed rectification, disposition and implemented disposition of an identified nonconformity.

"**Olympic Games**" means the 2010 Olympic Winter Games and the 2010 Winter Paralympic Games.

"**Olympic Operations**" has the meaning given to it in Volume 4, Section 6.4.

"**Olympic Period**" has the meaning given to it in Volume 4, Section 6.2.

"**Olympic Requirements**" means those requirements, set out in Volumes 3 and 4, which are to be provided specifically for the Olympic Period, based on commitments made in the Vancouver 2010 Bid Book.

"**Operation and Maintenance Performance Deduction**" has the meaning given to it in Section 3.2.2 of Volume 1.

"**Operation, Maintenance, and Rehabilitation Requirements**" means the requirements set out in Volume 4 including any other commitments of scope etc. from DBFO Co's Proposal.

"**Operational Performance Measures**" has the meaning given to it in Volume 4, Appendix 4B, Section 1.2.

"**Other Vehicles**" means any vehicle classified as Class 1 to 3 in the GR02-FHWA13 Vehicle Classification Table.

"**Parks Letter of Agreement**" means the agreement between the Ministry of Transportation, Sea to Sky Improvement Project and the Ministry of Water, Land and Air Protection, Lower Mainland Environmental Stewardship Division, dated January 2004, which stipulates the parties' agreement on the use of BC Parks lands.

"**Partnerships BC**" means Partnerships British Columbia Inc.

"**Payment Mechanism**" means the method described in Appendix 1D used to determine the payments to be made by the Province to DBFO Co for fulfilling DBFO Co's obligations under the DBFO Agreement.

"**Permits, Licences, and Approvals**" has the meaning given to it in the DBFO Agreement.

"**Person Years**" means an amount of time calculated by dividing the total number of hours of employment paid by the number of hours a full time person would normally work in the course of one calendar year.

"**Personal Injury Accidents**" and "**Personal Injury**" has the meaning as defined by the RCMP categorization of accidents and includes both personal injuries and fatalities as defined therein.

"**Physical Monitoring**" means monitoring by visual inspection and routine audits by both DBFO Co and the Province.

"**PM Sections**" means the geographic segments of the Highway identified for purposes of performance measurement required for the payment mechanism. They are defined in detail in Appendix 1D. They may be redefined by DBFO Co in development of their performance measurement system. (The Payment Mechanism Sections that may not be consistent with the DB Sections.)

"**Post Olympic Completion**" means the completion or removal of any works required as a result of either temporary works put in place as part of the Olympics or works that are agreed to be deferred due to the Olympic requirements.

"**Post-Olympic Works**" means the decommissioning of those interim works which had been constructed solely to satisfy the Olympic Requirements and which are not part of the permanent New Works, those portions of the New Works which had (by mutual agreement between the Province and DBFO Co) been deferred until after the Olympic Period, and any additional works beyond the Minimum Performance Requirements that DBFO Co may have committed to providing.

"**Preferred Proponent**" means the Proponent selected by the Province as having submitted the highest ranked Proposal in accordance with Volume 1 and Appendix 1B.

"**Preferred Proponent Agreement**" means the agreement to be entered into between the Proponent, the Province and others in accordance with Section 4.2.3 Volume 1.

"**Priced Amendments**" has the meaning given to it in Section 4.2.4 of Volume 1.

"**Prime Members**" means any individual, corporation, joint venturer, partnership or other legal entity, exclusive to one Proponent, who, if the Proponent is awarded the DBFO Agreement, would have a role which involves one of the following: (i) undertaking construction work which is equal to or greater than 10% of the total construction activity, (ii) providing O&M Services which are equal to or greater than 25% of the total O&M Services or (iii) undertaking design work which is equal to or greater than 25% of the total design activity.

"**Project Term**" means the term of the DBFO Agreement, that is the period of time from the Effective Date to March 31, 2030.

"**Proponent**" has the meaning given to it in Section 1.1 of Volume 1, and "Proponents" means any two or all of the Proponents.

"**Proponent Team Member**" includes the Proponent, a Prime Member or an Equity member or any other member of the Proponent, and any of their respective contractors, consultants, advisors, representatives, agents, successors and permitted assigns.

"**Proposal**" means a proposal submitted by a Proponent in response to this RFP prior to the Closing Time at the Closing Location.

"**Proposal Forms**" means the forms included in Appendix 1E of Volume 1.

"**Proposed Amendments**" has the meaning given to it in Section 4.2.2 of Volume 1.

"**Proposed Right-of-Way**" means the area of land within which the Province may, as set out in Section 2.5.2 of Volume 1, be able to acquire property for the DBFO Project. It corresponds to the land area specified in the environmental assessment application for the Sea-to-Sky Improvement Project.

"**Province**" means Her Majesty the Queen in right of the Province of British Columbia.

"**Province's Traffic Forecast**" means the "Sea-to-Sky Corridor Traffic Forecast Report", June 2004, TSi Consultants" as contained in the electronic data room.

"**Provincial Corridor Objectives**" has the meaning given to it in Appendix 1B.

"**Quality Audit**" means a systematic, independent and documented process for obtaining objective evidence to determine the extent to which audit criteria are fulfilled.

"**Quality Audit Plan**" means a plan defining the internal and external audits required to cover critical project activities.

"**Quality Management Plan**" means a detailed plan for the implementation of a Quality Management System with respect to a specific project, product, process, activity or contract.

"**Quality Management System**" means a management system that establishes the organizational structure, procedures, processes and resources for determining and implementing quality management policy.

"**Quality Management System Requirements**" means the requirements for a quality management system as set out in Volume 5 of this RFP.

"**Quality Manual**" has the meaning given in Volume 5.

"**Quality Objectives**" means objectives related to quality that are measurable and consistent with the quality policy.

"**Quality Policy**" means the overall intentions and direction of an organization related to quality as formally expressed by top management.

"**Railway**" means the railway to be operated by the BC Rail Partnership.

"**Record Documents**" means all documents of any kind which record the as-built features of the Highway.

"**Record Drawings**" means drawings which record the as-built features of the Highway.

"**Recreation Area**", as defined in the Park and Recreation Area Regulation, BC, August 1990, means Crown land reserved or set aside for public recreational use and established as a recreation area by or under the Park Act.

"**Recreation Focus Group**" means parties interested in recreation and invited to provide input into the highway design through a consultative process.

"**Registration of Interest**" means the Registration of Interest issued January 15, 2004.

"**Reimbursable Delay**" means a delay incurred through no fault of the DBFO Contractor.

"**Remaining Life Distribution**" means the statistical distribution of remaining life versus quantity (e.g. road length).

"**Representatives**" means Partnerships BC, the Fairness Reviewer, the Conflicts Adjudicator, BCTFA or any of their or the Province's respective directors, officers, representatives (including members of the Executive Council), managers, employees, consultants, advisors or agents.

"**Request for Information**" has the meaning given to it in the Bidding Agreement.

"**Request for Proposals**" means the Request for Proposals issued on August 31, 2004 and includes all volumes, appendices, and addenda.

"**Request for Qualifications**" means the Request for Qualifications issued March 3, 2004 and includes all addenda and appendices thereto.

"**Respondent**" means a party or consortium of parties which submitted a Submission in response to the Request for Qualifications.

"**Restricted Parties**" means those persons or entities from time to time identified by the Province or the Conflicts Adjudicator as being ineligible to participate as a Proponent,

Proponent Team Member or advisor to any such person or entity, including the Fairness Reviewer, Conflicts Adjudicator, BCTFA.

"**Revised DBFO Agreement**" has the meaning given to it in Section 4.2.1 of Volume 1.

"**RFI Form**" means the form as set out as an appendix to the Bidding Agreement to be used by Proponents for the submission of written questions, inquiries, requests for information, requests for clarification or other communications with the Province or Partnerships BC through the Contact Person.

"**Right-of-Way**" means the lands which the MOT has the right to occupy either by way of ownership, license, or Statutory Right-of-Way.

"**Road Safety Audit**" is a formal and independent safety performance review of a road transportation project by an experienced team of safety specialists, addressing the safety of all road users.

"**Rock Slope Stabilization Program**" is the Province's program for inventory, hazard assessment, rating and stabilization of slopes that may generate rock fall along Provincial highways. The program is defined by the Provincial Rock Slope Stability Policy.

"**Rural Area Deduction**" has the meaning given to it in Section 3.2.2 of Volume 1.

"**Rural Arterial Divided**" has the meaning as given in TAC Geometric Design Guide, Chapter 1.3.

"**Rural Arterial Undivided**" has the meaning as given in TAC Geometric Design Guide, Chapter 1.3.

"**Rural PM-Sections**" means PM-Sections classified as rural given the minimal entry and exit points within the section.

"**Safety Performance Payment**" has the meaning given to it in Section 3.2.4 of Volume 1 and in Section 6.1 of Appendix 1D.

"**Sea-to-Sky Highway Improvement Project**" means the project described at www.seatoskyimprovements.ca.

"**Service Weighting**" means the proportion each PM-Section contributes to the Maximum Availability Payment and as specified within Sections 2.1 and 2.2 of this Appendix.

"**Site**" has the meaning given to it in the DBFO Agreement.

"**Special Event Days**" are specific days as identified in Section 3.2.1.8 of Volume 3.

"**Special Events**" mean events that have a high public and/or political value.

"**Squamish Nation**" means the Squamish Nation, the Squamish First Nation and the Squamish Indian Band and its members, all of which are intended to refer to the same group of traditional peoples.

"**Stakeholders**" includes, amongst others, the Municipalities, BC Rail, BC Rail Partnership, First Nations, RCMP, BC Hydro, Telus, Terasen, and Vancouver's organizing committee for the Olympic Games.

"**Stipend**" has the meaning given to it in the Bidding Agreement.

"**Stoppage**" has the meaning given to it in Volume 3, Section 3.2.

"**Submission**" means the submission provided by a Respondent in response to the RFQ.

"**Submittal**" has the meaning given to it in Appendix 1F of Volume 1.

"**Substantial Completion**" has the meaning given to it in the DBFO Agreement.

"**Summary Baseline Construction Schedule**" means the schedule developed by the Province which includes a schedule for the Province's anticipated property acquisition activities.

"**Table of Commitments and Responsibilities**" refers to Table 1 of the Owners Table of Commitments and Responsibilities dated May 18, 2004 which forms part of the Environmental Assessment Certificate for the Project.

"**Technical Requirements**" means the requirements set out in Volumes 3, 4, and 5 that, collectively, establish the design, construction, operation, maintenance, rehabilitation and quality management systems of the DBFO Project, as amended by Addenda issued in accordance with the provisions of this RFP.

"**Telus**" means Telus Corporation and its affiliates.

"**Terasen**" means Terasen Inc.

"**Termination Date**" has the meaning given to it in the DBFO Agreement.

"**Topic Meeting**" means a meeting between the Province and a Proponent as more fully described in the Bidding Agreement.

"**Total Performance Payment**" has the meaning given to it in Section 3.2 of Volume 1 and in Section 1.1 of Appendix 1D.

"**Traffic Flow**" means the number of vehicles entering and exiting a Highway section over a pre-determined period of time.

"**Traffic Management and Winter Maintenance Plan**" means the strategy to specifically maintain the road and manage the movement of traffic during winter conditions.

"**Traffic Management Payments**" has the meaning given in Section 3.2.4 of Volume 1 and in paragraph 6.2 of Appendix 1D.

"**Traffic Management Plan**" is the plan described in Section 3.3.1 of Volume 3.

"**Trailheads**" means a recreational hiking trail access.

"**Travel Time Cost**" means the dollar per vehicle hour to be applied in determining the Rural Area Deduction and defined in Section 3.1 of Appendix 1D.

"**Travel Time Delay**" means the number of vehicle hours and represents the impact on vehicles delayed in a PM-Section of the Highway due to some event.

"**Tsleil-Waututh Nation**" means the Tsleil-Waututh Nation, the Burrard Indian Band and its members.

"**Unavailable**" where the Highway does not meet the pre-determined standards.

"**Underwritten Financing**" means a financing program for the DBFO project that is fully supported by firm commitments from financial institutions.

"**Urban Area Deduction**" has the meaning given to it in Section 3.2.2 of Volume 1.

"**Urban Arterial Divided**" has the meaning given to it in TAC Geometric Design Guide, Chapter 1.3.

"**Urban PM-Sections**" means PM-Sections classified as urban given the numerous entry and exit points within the section.

"**Utilization**" means a measure of the actual usage compared to the design capacity.

"**Vehicle Usage Payment**" has the meaning given to it in Section 3.2.3 of Volume 1.in and in Section 5 of Appendix 1D.

"**Vehicles**" means the aggregate of Long Vehicles and Other Vehicles.

"**WCB Regulations**" are the regulations issued pursuant to the Workers Compensation Act.

"**Work Zones**" are those areas including physical limits of construction and Construction Speed Zones as used in Sections 3.3.1.7 and 3.3.1.11.

"**Workers Compensation Board**" is the board constituted pursuant to the Workers Compensation Act.

"**Works**" means the permanent works and the temporary works required in accordance with the design, construction, operation, maintenance and rehabilitation of the Highway, Adjacent Side Roads and Adjacent Areas including side roads, bridges, other highway structures, fences, drainage systems, grassed areas and trees, planted areas, footways, road markings, road traffic signs, traffic signals and lighting, communications installations, washrooms and rest areas, picnic sites, pullouts, embankments and cuttings and archaeological and ecological works.

"**Workshop**" means a workshop scheduled by the Province in accordance with the terms of the Bidding Agreement.

"**Zone**" means a geographic segment of the Highway where construction work is being conducted (typically referred to as work zones).

Interpretation

References to the RFP or the DBFO Agreement, or to the documents which make up the appendices or schedules to the RFP or the DBFO Agreement, or to any part of those documents, shall be deemed to be references to the most current version of those documents, including all modifications, amendments and Addenda thereto made and issued by the Province to Proponents.

References to a section, article or volume, without a further reference to another document or to a specific Appendix to the RFP, shall be deemed to be references to that Section, Article or Volume of the RFP, exclusive of appendices, unless the context otherwise expressly requires. References to a Section or Article of the RFP within a volume of the RFP shall be deemed to refer to the Section or Article within such Volume of the RFP.

References to an appendix or volume by number in the RFP or in an appendix or volume to the RFP shall be deemed to be a reference to an appendix or volume (as applicable) of the RFP unless the context otherwise expressly indicates.

References to a statute include the statute as amended from time to time, and in the event that statute is repealed includes any successor legislation thereto including amendments to the successor legislation, and includes all regulations, by-laws and codes enacted thereunder as such regulations or by-laws or codes may be amended from time to time.

The terms "include", "includes", "including" and others of like import shall not be deemed limited by the specific enumeration of items but shall be deemed to be without limitation and interpreted as if the term was "including without limitation."

References to "in its discretion" and terms of similar import when used in reference to the Province, MOT, Partnerships BC or the Province shall be deemed to mean and be interpreted as "in MOT's sole and absolute discretion", "in the Province's sole and absolute discretion" or "in Partnerships BC's sole and absolute discretion", as applicable.

Where a section, clause, paragraph or other part of any document includes a list of items, whether or not enumerated, the list of items will be construed and interpreted conjunctively as if each was connected to the other by the word "and", unless the context specifically indicates the terms are to be construed and interpreted disjunctively by the use of the word "or" at the end of each item of the list.

Capital Project Plan:
Sea-to-Sky Highway Improvement Project
January 10, 2004

1. Background: Current Highway Conditions

The Sea-to-Sky Highway corridor provides access to communities and resources along Howe Sound, including Lions Bay, Furry Creek, Squamish, Whistler, Pemberton, Mount Currie, and ultimately to the interior of British Columbia and beyond along the Duffy Lake Road.

The current predominantly two-lane highway has safety, reliability, mobility and maintenance problems and is facing growing congestion.

1. **Safety** – High accident rates and severity that significantly exceed provincial averages (between 1996 and 2000, 27 fatalities, 552 injuries and 600 property damage only accidents).
2. **Reliability** – Recurring delays due to normal construction activities, rock scaling, development, special events, rock falls, debris torrents and other natural events (an average of 405 full and partial closures annually)
3. **Mobility** – Poor average travel speeds between Vancouver and Whistler, resulting from congestion in urban sections and narrow, winding rural sections (average speed is 55 km/h from Horseshoe Bay to Whistler)
4. **Maintenance** – High annual operation and maintenance cost for highway (operation and maintenance cost exceeds $6 million annually)
5. **Capacity** – Traffic studies indicate that traffic volume will increase by 62% by year 2025 resulting in growing congestion, higher accident levels and longer trip times, if improvements are not made

2. Project Objectives

Extensive improvements to the highway are required between Horseshoe Bay and Whistler to improve safety, reliability, and mobility making travel along the corridor safer for residents, commuters, tourists, and businesses moving goods. Highway improvements will serve population growth, economic development in corridor communities and increasing demand for resident travel, visitor travel and goods movement.

The hosting of the 2010 Olympics has accelerated the need for some improvements in order to accommodate projected traffic levels during the games. Construction of these improvements must be completed prior 2010 Olympics. These improvements would have been needed in any event by 2012, based on projected traffic volume increases.

Improvements will include safety and reliability upgrades such as highway widening, flattening of curves, improved sightlines, passing lanes, wider ditches and shoulders and other measures to reduce hazards. These improvements will employ context sensitive design so as to encourage safe driving practices. For example, motorists will be encouraged to drive at a consistent and safe speed by providing a curvilinear roadway that eliminates or avoids instances where higher speed long straight sections transition abruptly into lower speed short tight curves. It is projected that the number of accidents on the highway will be reduced by 30% from the level that would otherwise occur.

The improvements will also shorten travel times and increase capacity of the Sea-to-Sky Highway. It is estimated that the travel time between West Vancouver and Whistler will be reduced by 15 minutes.

The extent and nature of the improvements will be also based on consultations with corridor residents and communities. These consultations are continuing. The project team has worked with corridor residents, business groups and community leaders to develop a strategy for sequencing construction to minimize disruption, and maximize predictability of travel delays and road closures.

The Sea-to-Sky Highway will be configured as follows upon project completion:

- The section from Horseshoe Bay to Lions Bay (12 kilometers in length) will be four lanes. The project team is engaged in consultations with the District of West Vancouver to finalize the alignment and features of the highway through the community.
- The section through Lions Bay (4 kilometers in length) will be four lanes during the Olympics, with the potential to convert to three (two northbound) or two lanes after the Olympics, pending the outcome of community consultations currently underway.
- The section from Brunswick Beach north of Lions Bay to Furry Creek (15 kilometers in length) will be predominantly two lanes, plus a 3rd lane on the adjacent rail bed during the Olympics. Permanent improvements in this section will include rock slope stabilization, some alignment straightening and expanded passing areas.
- The section from Furry Creek to just south of Darrel Bay (14 kilometers in length) will be three lanes, with some four lane zones.
- The section from Darrel Bay to Depot Road in Squamish (13 kilometers in length) will be four lanes. The project team is engaged in discussions with the Squamish First Nation to finalize highway features through IR 24 and with the District of Squamish to finalize features of the highway through the community, including connections to the municipal road network.

- The section from Depot Road in Squamish to Function Junction in Whistler (41 kilometers in length) will be three lanes, with some four lane zones. No changes will be made to the highway from Depot Road to Culliton Creek (13 kilometers). This section has been recently upgraded to a minimum of three lanes. The section from Culliton Creek to the north end of Cheakamus Canyon (7 kilometers) is currently being widened to three lanes, with some alignment straightening. This work is a separate project that pre-dates the Sea-to-Sky Highway Improvement Project.

3. Project Status

Development of the Project has proceeded along a number of fronts. In addition to undertaking planning and engineering studies, the project team has engaged in consultations with the public, community and business groups, First Nations, municipal officials and regulatory agencies. Some of these consultations have occurred under the auspices of the Environmental Assessment Process applicable to the Project.

The project team has participated in almost 300 meetings over the last two years with groups along the corridor. In addition, the Ministry has commissioned studies regarding transportation alternatives, alternative routes, and socio-economic and environmental impacts, as well as engineering and costing studies, in response to issues and concerns that have been expressed.

The Project submitted an application for an Environmental Approval Certificate on August 13, 2003 and anticipates receiving the certificate by March or April, 2004. Completion of preliminary design is anticipated within the same timeframe.

The preliminary stages of procurement have commenced, including starting construction on a test section south of Lions Bay to gain specific knowledge of geotechnical, constructability and traffic management issues associated with the project, and issuing a Request for Qualifications for construction of the remainder of the section between Ansell Place and Lions Bay. Procurement for the remainder of the project is to be initiated shortly. The award of major construction contracts will occur subsequent to receipt of an Environmental Approval Certificate.

4. Project Costs

The estimated capital cost of the Project is $600 million, comprised of the following components:

	($millions)
Project Management, Consultations/Communications and Procurement	21
Planning, Preliminary Engineering and Quality Assurance (including environmental and First Nations impact studies)	24
Property Acquisition	20
Detailed Design and Construction (including contingencies)	535
Total	**600**

Preparations for Project procurement have included extensive costing analyses:

- Development of preliminary cost estimates by design teams;
- Review and adjustment of the cost estimates by the Owner's Engineer;
- Development of cost estimates by an independent cost estimating specialist and comparison and reconciliation of these cost estimates with those of the Owner's Engineer;
- Inclusion of substantial contingencies in the cost estimates; and
- Probabilistic risk analysis to determine an expected range of project costs.

A review by the Auditor General concluded that thorough costing methodology and procedures was used to develop the cost estimate for the Project.

5. Project Benefits

Following completion of construction, the improved highway is expected to generate significant benefits. Over the period 2010 to 2025, highway users are expected to realize benefits in the order of $873 million.

Travel Time Savings	$276 million
Vehicle Operating Cost Savings	$80 million
Accident Cost Savings	$517 million
Total Road User Benefits	**$873 million**

The improvements will also stimulate tourism throughout the corridor, benefit the forest and agricultural sectors and facilitate new developments. The estimates of incremental economic benefits include $297 million in GDP and 6,000 new jobs.

6. Project Risks

The Project is complex and challenging because of:

- The tough terrain it traverses;
- The need to keep a large volume of traffic flowing (currently an average of 14,000 cars per day, with peaks of 16,000 cars per day) while working in a constricted environment;
- The need to address a number of municipal, First Nation and environmental issues; and
- The unalterable schedule for completing the job.

These factors largely coincide with the main risk areas that may impact the budget. The Ministry of Transportation is confident that these risks can be successfully managed.

1. **Geotechnical Risk:** This risk arises from the possibility of encountering unforeseen ground or rock conditions. As such, it is a source of budget risk. Measures to mitigate this risk include:
   - Undertaking substantial geotechnical investigations, including undertaking construction on a test section,
   - Adopting contracting practices that will transfer geotechnical risk to contractors.
   - Developing cost estimates that take this risk transfer as well as the results of the geotechnical investigations into account.
2. **Traffic Management Risk:** The project team, based on advice from experts (including experienced contractors), and in consultation with

stakeholders in the Sea-to-Sky Highway corridor, has developed a traffic management regime that contractors will need to adhere to. This regime stipulates available time periods for closing the highway to undertake required construction activities. The traffic management regime will be a major factor that contractors will take into account in preparing their bids. As such, it is a source of budget risk. Measures to mitigate this risk include:

- Obtaining independent expert advice.
- Developing cost estimates that take into account the traffic management regime and commissioning independent costing analyses as described above.
- Gaining specific knowledge of constructability and traffic management issues during construction of the test section.
- Requiring contractors to provide full traffic management plans consistent with the stipulated traffic management regime, and review of these plans by experts.
- Incorporating appropriate incentive structures in contracts to encourage effective traffic management.

3. **Schedule Risk:** The project team will incorporate terms within contracts to ensure the Project is completed by the Fall of 2009. These terms will be a major factor that contractors will take into account in preparing their bids. As such, they are a source of budget risk. Measures to mitigate this risk include:

- Obtaining independent expert advice.
- Obtaining input from short-listed contractors during procurement.
- Requiring contractors to provide full schedules, with milestone dates for completion of work components, and review of these by experts.
- Extensive progress monitoring by the project team to allow early identification of any schedule issues and provide the opportunity for discussions with contractors to identify methods of rectifying schedule problems, before they become unrecoverable.